

AN ANALYSIS OF WEAPONS LAWS AND THE APPLICATION OF ZERO
TOLERANCE WEAPONS POLICIES IN GEORGIA PUBLIC SCHOOLS

by

MICHAEL RAY GWATNEY

(Under the Direction of John Dayton)

ABSTRACT

This study reviewed the weapons laws of the United States and Georgia, as well as the zero tolerance weapons policies of Georgia, and concluded that:

1. The implementation and enforcement of “zero tolerance” policies can be legally problematic for public school officials. The federal *Gun-Free Schools Act* requires states receiving federal funding to develop policies that require expulsion for students who bring weapons to school.
2. Georgia code § 16-11-127.1, a zero tolerance weapons law, provides strict definitions of items considered weapons, which are prohibited by the law on and within 1,000 feet of school property. Little or no discretion is afforded to school or law enforcement officials trying to make a determination about a person’s intent in possessing the unauthorized item. Elements that are typically essential to the commission of any crime, such as the accused person’s intent or state of mind, are not necessary for prosecution. By broadly defining the term “weapon” in Georgia law, a student who accidentally brings a pocketknife to school is as guilty as another who intentionally brings an assault rifle; both offenses are felonies under current Georgia law.
3. Local boards of education in Georgia are no longer limited to the application of civil codes and regulations pertaining to public education. Recent Georgia laws now allow local boards of education to administer campus police agencies, which have full authority to enforce criminal laws within school safety zones.
4. As agents of the government, public school officials are obligated to protect the rights of students and school personnel. Zero tolerance policies and laws make strong political statements; however, one-size-fits-all answers simply complicate the obligation school officials have to protect the rights of individuals within the school community.

5. Legislative revision to current Georgia law should be considered. Many common items used frequently during the daily operation of a school, which are otherwise legal to possess, are currently prohibited in Georgia's school safety zones.

This study is intended to assist public educational practitioners in making better decisions by having a thorough understanding of the laws concerning weapons in Georgia's schools.

INDEX WORDS: Weapon, school, zero tolerance, O.C.G.A. § 16-11-127.1, Gun-Free School Zones Act

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DEDICATION

This paper is dedicated to my wife, Manda, who shares my enthusiasm for lifelong learning and discovery. Her love, friendship, and support have helped me to achieve each of my goals. From starting my career, through the many processes involved in completing each of my degrees, to most importantly becoming a father, she has been there with me and for me every step of the way. Thank you, Manda. I love you!

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CHAPTER 1

INTRODUCTION

Problem Statement

In response to an increase in the amount of violent acts involving dangerous weapons, especially firearms, in America's public schools, legislative bodies throughout the United States have created a myriad of new laws in an attempt to curb the violence. Even though there are currently over 20,000 laws nationally pertaining to firearms use and possession (*Protection of lawful commerce*, 2003; see also National Rifle Association-Institute for Legislative Action [NRA-ILA], *Fact Sheet: Federal penalties*, 1999), media reports of students illegally possessing and using firearms and other dangerous weapons in and around America's schools remain common.

The most horrific of these instances, such as the 1999 shooting at Columbine High School in Littleton, Colorado, are often the catalysts for additional legislation intended to further regulate the possession of weapons, especially in and around schools. As this trend to create targeted legislation continues to evolve, the resulting laws and their enforcement often call for a removal of discretion as to how they are to be applied by school officials and members of law enforcement. Laws of this nature, commonly referred to as "zero tolerance laws," can be legally problematic for a variety of reasons, including violations of the fundamental due process rights of notice and hearing (Jenkins & Dayton, 2003).

These laws have gradually become more encompassing when legally defining the term “weapon.” As a result, possession of any of a wide variety of very common household items within a school safety zone has become illegal, including butter knives, cake knives, and utility knives (Dayton, 1994). In Georgia, the school safety zone includes all school property, as well as all other property within 1,000 feet of school property (Official Code of Georgia, Annotated [O.C.G.A.], 16-11-127.1).

Since kitchen knives, including steak knives, paring knives, cake knives, butter knives, and other dull flatware, are included among all types of knives, they are illegal under statutes preventing their possession. Likewise, saws, box cutters, pry bars, awls, and other common home-hardware type tools that have sharp or bludgeon-type surfaces may also be prohibited, even though they may have legitimate uses in classrooms, on school property, and within 1,000 feet of school property.

Prohibited items that are similar in name or nature, but used for very different purposes, may be treated the same. For example, a student who unknowingly violates a zero tolerance weapons law by having a “butter” knife in his backpack could be prosecuted the same as another student who intentionally carries a “butterfly” knife. The purpose for having the knife is not an issue under zero tolerance laws. Even if the student with the butter knife intends only to cut a birthday cake at a school party, and the student with the butterfly knife carries that weapon for the purpose of intimidating and harming fellow students, both students could be prosecuted equally. Articles of clothing may also be affected by this legislation. For example, a student possessing a wallet with an attached belt-chain that is used to prevent loss of the wallet may be charged the same as a student possessing a martial arts fighting-chain that is used to inflict injury upon others.

By broadly defining the term “weapon,” very different items may be treated the same according to the statute. For instance, a student may be in possession of an object that is strictly defined as a weapon in a zero tolerance statute, even though the object is a common household item with a variety of lawful uses. Consider two examples: 1) A student who unlawfully possesses a firearm at school for the purpose of self-protection during illegal drug sales between classes, and 2) a student who possesses an unauthorized box-cutting knife to strip wiring in a vocational construction class. Under many statutes, both items may be defined as “weapons,” and both students could be equally charged with possession of a weapon. Even though the intent of each person in the two examples is very different, both students could be prosecuted and punished equally. Furthermore, a statute may require a rigidly prescribed mandatory punishment for any violation.

As more restrictive laws are created, the terminology that defines actual possession of the weapon frequently becomes wider, also. “Absolute liability” (also referred to as “strict liability”), which is defined as “Liability that does not depend on actual negligence or intent to harm” (Garner et al., 1999, p. 926), is often written into zero tolerance laws. For instance, the possession of a rifle in the trunk of a student’s automobile requires arrest under many zero tolerance laws.

Little or no discretion is afforded to school or law enforcement officials when trying to determine a person’s intent in possessing the unauthorized item. Under many statutes, it is not necessary to determine *mens rea*, or the defendant’s state of mind, which, under the common law, is an essential element of a crime (Garner et al., 1999). For example, there is a tremendous difference between a student with a .22 caliber single-shot bolt-action rifle in his trunk that will be used for lawful squirrel hunting after school

hours compared to another student with a .223 caliber semi-automatic assault rifle in his trunk that is capable of quickly firing dozens of rounds and will be used as a part of a plan by the student to deliberately harm others in the school. Under many laws, both students could be charged, and possibly sentenced, equally.

A significant component of zero tolerance legislation is mandatory sentencing. Using the previous example of the student having a .22 caliber single-shot rifle in a locked trunk and another with a .223 caliber assault rifle at school, if they were successfully prosecuted under a law requiring mandatory sentencing, both students would receive an equal punishment for crimes that are vastly dissimilar. The intent of the accused is often not a consideration when important decisions, such as whether or not to press charges or assign sentencing, are being made.

The nature of strict liability with zero tolerance enforcement has the potential to make criminals out of students who do not knowingly break the law. Often, an arrest for not complying with a code or ordinance with zero tolerance enforcement denies certain protections that are fundamental to the Constitution. For example, the Fifth Amendment to the U.S. Constitution (1791) requires that no person “be deprived of life, liberty, or property, without due process of law.” The Fourteenth Amendment (1868) further states “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” As applied in the school setting, “students cannot be deprived of their educational property interests through suspension or expulsion without providing constitutionally sufficient notice and hearing” (Dayton, 1994, p. 3).

Under the terms of strict liability, ignorance of the law offers no excuse for a violation. According to Dayton (1994), proper notice requires that students be made aware of the charges against them. Furthermore, proper notice requires that students be informed in advance about what types of conduct are punishable. Finally, Dayton (1994) contends, “the courts have held that to be constitutionally sufficient this notice may not be overly vague, but must be sufficient to inform persons of common intelligence specifically what is prohibited” (p. 3).

Purpose of the Study

In a 2002 survey conducted by the National Education Association (NEA), 65% of NEA members surveyed indicated that zero tolerance is a “good idea” for school discipline and safety. But regardless of personal opinions on this subject, certified public school educators must always remember that, as government agents who have sworn to uphold the Constitution of the United States, they must be aware of the protections that it affords to all citizens, including minors in a school setting. In a ruling on the First Amendment, the Supreme Court of the United States stated in *Tinker v. Des Moines Independent Community School District* that “First Amendment rights of freedom of speech expression, applied in light of the special characteristics of the school environment, are available to teachers and students, and neither students nor teachers shed such rights at the schoolhouse gate” (1969).

From *Tinker* (1969), it may be inferred that neither teachers nor students give up any constitutional rights while they are attending school. This is the same protection afforded to all citizens. LaMorte (1999) asserts that these “rights are available to public

school students because the public school operates under the ‘color of the State’” (p. 98). Therefore, it is the responsibility of public school officials to ensure that those rights are protected while students are in public schools. Furthermore, constitutional protections also extend to adult members of the public school community. School officials are obligated to respect their rights as well.

Traditionally, it has been the duty of local boards of education to administer only the particular civil codes relating to the education of students of that jurisdiction. However, with a recent increase in legislation allowing local boards of education to form their own law enforcement agencies as sub-components of their overall educational programs, local boards of education are increasingly administering and enforcing criminal statutes. Numbers of school police officers, or school resource officers (SROs) as they are commonly called, are increasing each year. SROs are usually employees of the school district, and in certain states, such as Georgia, they may receive their police power directly from the local board of education (O.C.G.A. § 20-8-5). Also, school resource officers in some states, including Georgia, have police power identical to any other law enforcement agent with authority in that particular jurisdiction (O.C.G.A. § 20-8-2). In Georgia, this remains true even when they are not affiliated with any other unit of organized law enforcement, such as a local sheriff or police agency (O.C.G.A. § 20-8-2).

As Dayton (1994) stated concerning zero tolerance policies for weapons in schools:

Complex problems can rarely be resolved by simplistic ‘one size fits all’ solutions. Although policies that eliminate discretion make fashionable political

statements and may be attractive to persons seeking a quick fix solution, there is simply no substitute for sound judgment by school administrators when dealing with children. (p. 3)

The responsibility of protecting rights and implementing sound judgment has become increasingly complicated in the modern school setting. This study is intended to assist educational practitioners in making more just and lawful decisions for children through acquiring a better understanding of the laws concerning weapons in schools.

This study will describe and analyze the development and current status of zero tolerance laws and policies pertaining to weapons in schools in the United States, particularly in the State of Georgia. This will include a chronological account of the events leading to the weapons laws and policies that currently affect schools. Current zero tolerance laws and policies for the State of Georgia will be examined.

Research Questions

The following questions will be addressed:

1. What is the relevant legal history of the law as it relates to weapons within school safety zones?
2. What is the current status of the law as it relates to weapons and zero tolerance policies within Georgia's school safety zones?

Procedures

This study used standard legal research methodology. Among the sources of information used in this dissertation were:

- The University of Georgia Libraries
- Other public and university libraries
- Internet-based search sites, such as Lawcrawler, Findlaw, Google, and Metacrawler
- Restricted access specialized Internet-based research sites, such as GALILEO and LexisNexis
- The official United States Government Internet sites of the Library of Congress and the United States Courts
- The National Rifle Association – Institute for Legislative Action
- The Brady Center
- The Georgia Department of Education, and
- The official website of the State of Georgia.

An extensive search was conducted utilizing these sources to reveal any relevant laws of the United States and the State of Georgia. Federal and State of Georgia administrative regulations, policies, and enforcement regulations concerning the topic were identified and analyzed. Next, relevant court cases and decisions in both federal and Georgia jurisdictions were located. These cases, as well as the effects that their decisions had on the status of the law, were analyzed. Other related government documents, such as constitutions, legislative records, attorney general opinions, and other historical scholarly commentary on the subject, were retrieved and reviewed. All relevant documents in this study were synthesized to create an accurate composite perspective on the topic.

Chapter two, the review of relevant literature, is arranged chronologically. The first parts of chapter two provide the reader with a thorough perspective on the history of the laws concerning weapons in society. The final parts of chapter two review current applicable laws, policies, and regulations pertaining to the topic.

Chapter three provides the reader with a specific, detailed treatment of the current status of the law. The primary focus is on Georgia law, particularly O.C.G.A. § 16-11-127.1, which pertains to weapons in and around schools. The analysis in chapter three pertains to the public school setting in Georgia.

Chapter four contains the findings of this dissertation. In addition, sections that address conclusions based on the findings, recommendations, and final comments concerning weapons laws and policies in Georgia public schools are included in the fourth chapter.

Limitations of the Study

This dissertation is a study of the laws and policies pertaining to zero tolerance of weapons in Georgia public schools. This dissertation will not address other areas of concern related to zero tolerance, such as the implementation of laws and policies to regulate speech, behavior, dress, or the use of controlled substances.

Although the legal principles of this study apply to all citizens under the jurisdiction of the Constitution of the United States, this dissertation will focus only on how these principles apply to members of the public school community in the State of Georgia.

This study will not address all social issues or implications concerning violence and weapons in public schools. It addresses only the legal dimensions of zero tolerance weapons laws and policies in public schools, and explains the current status of the law. The information in this document does not necessarily apply to any jurisdiction other than Georgia.

Finally, the examinations of law, policies based on law, as well as the findings included in this research, do not constitute legal advice. Legal advice on this topic should be sought only from qualified legal counsel. Since no part of this dissertation is written as legal advice to any audience, it should not be construed as such under any context. The author is not an attorney, and legal advice is not implied, nor should it be inferred, by any part of this dissertation.

CHAPTER 2

REVIEW OF THE LITERATURE

This chapter presents a chronological review of the development of laws and policies implemented to control and regulate the possession of weapons in and around schools. Part one begins by reviewing the historical prevalence of weapons in society, extending back to the earliest days of world history. Part one concludes with a review of the foundation allowing for an armed population in America, which is the Second Amendment contained within the *Bill of Rights* (1791).

Part two continues with an examination of the development of laws, policies, and court decisions regulating the Second Amendment and its application to the general possession of weapons in this nation. Part two concludes with the passage of the first of a series of gun-free schools acts that were passed by the United States Congress during the 1990s.

Part three reviews legislation and court decisions since the original *Gun Free School Zones Act of 1990* that influenced the passage of other subsequent gun-free schools acts throughout the 1990s. State zero tolerance laws and policies, as well as school safety zone laws and policies, with specific legal requirements as stated in federal law were mandated by these various acts.

Part four examines the laws of Georgia pertaining to the general possession of weapons. In this part, general possession refers to areas of the state that are not on or around school property.

Finally, part five describes the development of state laws specifically regulating the possession of weapons in and around Georgia's schools. Georgia laws requiring the mandatory expulsion of students with weapons at school, as required by the federal law, are also reviewed in part five.

Part One: The Historical Prevalence of Weapons in Society

Weapons have played a significant role in human history. The use of weapons in society is recorded throughout the earliest accounts of human existence, including the cave art drawn many thousands of years ago by prehistoric man (*Archaic art of northern Africa*, n.d.). As illustrated on the walls of caves, prehistoric man used weapons both to capture prey during hunting and gain dominance over other people during battle.

The possession of weapons by members of society has been the topic of scholarly debate and discussion for thousands of years. The Greek philosopher Plato (trans. 2000), in his *Republic*, discussed who should be allowed to possess arms in society. The Greek philosopher Aristotle (trans. 2000) also reasoned through the idea of an armed society. In *Politics*, Aristotle declared that there exists a:

threefold division of citizens [including]...artisans, and the husbandmen, and the warriors, [who] all have a share in the government. But the husbandmen have no arms, and the artisans neither arms nor land, and therefore they become all but slaves of the warrior class. That they should share in all the offices is an impossibility; for generals and guardians of the citizens, and nearly all the principal magistrates, must be taken from the class of those who carry arms. Yet, if the two other classes have no share in the government, how can they be loyal

citizens? It may be said that those who have arms must necessarily be masters of both the other classes. (Book 2, Part VIII, ¶ 3)

Aristotle (trans. 2000) also contended in *Politics*, “in a constitutional government the fighting-men have the supreme power, and those who possess arms are the citizens” (Book 3, Part VII, ¶ 1). In addition, Aristotle states that a corrupt government can rule only over an unarmed populace, who are incapable of resisting governmental oppression. He writes that two of the three forms of government he compares – tyranny, democracy, and oligarchy – have the same vice and strive for the same end, which is wealth. “For by wealth only can the tyrant maintain either his guard or his luxury...[the tyranny and the oligarchy] both mistrust the people, and therefore deprive them of their arms” (Aristotle, trans. 2000, *Politics*, Book 5, Part X, ¶ 3).

The book of *Luke* in the *Holy Bible* records how Jesus, while preparing for the Roman advance that led to His arrest, told His disciples that “he that hath a purse, let him take *it*, and likewise *his* scrip: and he that hath no sword, let him sell his garment, and buy one” (*Luke 22:36*, King James Version). His disciples replied, “Lord, behold, here *are* two swords. And He said unto them, It is enough” (*Luke 22:38*, King James Version).

During more recent historical events, weapons played a significant part in the battles that led to the original colonies’ ability to gain political independence from Britain. At the conclusion of the American Revolution, the issue of weapons continued to play a fundamental part of the creation of our nation’s current form of government. Much of the debate about arms possession during the ratification of the United States Constitution focused on their importance in the preservation of the new nation’s recently

acquired freedom. American citizens had just fought for and gained independence from a government that generally denied its subjects the ability to legally possess weapons.

The possession of arms was also seen as a way to ensure that a standing professional army would not eventually take control of the new government. Further, it was generally viewed as a necessary component of a free and self-governing society. For example, Noah Webster (1787) wrote:

Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power, and jealousy will instantly inspire the inclination, to resist the execution of a law which appears to them unjust and oppressive. (p. 43)

The framers of the Constitution recognized the importance of an armed citizenry. They created a series of amendments to the Constitution to protect individual and unalienable rights, which included, among other things, the right of all citizens to keep and bear arms. This series of amendments, adopted in 1791, became known as the *Bill of Rights*. “The most significant guarantees for individual civil rights were provided by the ratification of the *Bill of Rights* (Amendments 1-10)” (*About the Constitution*, 1996, Amendments to the Constitution, ¶ 3). Furthermore, a majority of states would not ratify the final Constitution until the *Bill of Rights* was included. According to the records of

the United States Library of Congress, “ratification [of the Constitution] in most states depended upon the adoption of the *Bill of Rights* – as the first proposed amendments to the Constitution. Of the 12 amendments proposed in September 1789, 10 were ratified by the states” (*About the Constitution*, 1996, ¶ 3). Included among those final amendments was the Second Amendment, which states, “A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed” (*Bill of Rights*, 1791).

The framers of the Constitution recognized that an armed citizenry provided inherent protections against the possibility of a future corrupt central government. In his paper *Federalist No. 46*, “The Influence of the State and Federal Governments Compared,” James Madison (Hamilton, Madison, & Jay, 1961) states:

Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate [state] governments, to which the people are attached...forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms...[for] it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it. Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they

would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors. (p. 335)

Madison asserts that an armed citizenry is paramount for freedom and the prevention of a corrupt government. Furthermore, an armed citizenry prevents the deterioration and corruption of government from democratic to oppressive and tyrannical.

Virginia delegates also discussed the notion of how a new government could deteriorate over the course of time during Virginia's ratifying convention, which met in 1788. The famous American Patrick Henry contended that the power to fight an oppressive form of government, such as that experienced by the colonists under British rule, relied upon the right to possess arms. He stated, "Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are ruined" (2001, Quotes from the Founders during the ratification period of the Constitution, ¶ 10).

Part Two: The Regulation of Weapons in America

Eventually, state governments began to pass laws regulating the possession of weapons. In 1837, the Georgia Legislature enacted a ban on handguns. However, in *Nunn v. State of Georgia* (1846), the Georgia Supreme Court determined that the law was in violation of both the United States Constitution and the Georgia Constitution, which states, "The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne" (Georgia Constitution, Article I, Section I, Paragraph VIII). In *Nunn*, the Georgia Supreme Court stated:

A law which merely inhibits the wearing of certain weapons in a *concealed manner* is *valid*. But so far as it cuts off the exercise of the right of the citizen altogether to *bear arms*, or, under the color of prescribing the *mode*, renders the right itself useless--it is in conflict with the Constitution, and *void*. (1846)

The Supreme Court of the United States took the opportunity to address two cases involving the use of arms and the Second Amendment during the late 1800s. Although the issues in both of these cases did not directly involve violations of laws regulating or pertaining to firearms, in both cases the Court made reference to the Second Amendment's application in American society.

In *United States v. Cruikshank* (1875), the Supreme Court had an opportunity to interpret the Second Amendment. Although the case did not focus on the Second Amendment, the Court acknowledged that the right of the people to keep and bear arms existed prior to the Constitution. The Court also stated that the existence of such a right is not dependent specifically upon the Second Amendment. Finally, the Court stated that the Second Amendment did not grant permission to keep and bear arms, but it provided a guarantee that Congress would not be able to interfere with the people's right to keep and bear arms.

In *Presser v. Illinois* (1886), the Supreme Court affirmed its previous ruling in *Cruikshank*. The Court added that in addition to the restriction placed on Congress not to regulate the right to keep and bear arms, the Second Amendment also applies to the individual state governments. The Supreme Court stated:

It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or reserve militia of the United States as well as of the

States, and, in view of this prerogative of the general government, as well as of its general powers, the States cannot, even laying the constitutional provision in question out of view, prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the general government. (1886)

In 1934, the *National Firearms Act*, took effect. The act, which is still in effect today, regulates the possession of a specific class of weapons, which are referred to today as “Class 3” weapons. Among these special weapons were fully automatic guns, submachine guns, short-barreled rifles and shotguns, and firearm silencing devices. Included in the various provisions of the act were requirements that those who possess weapons of these types register them with the government. Furthermore, a transfer tax was to be collected upon the sale of these weapons.

The *Federal Firearms Act of 1938* added provisions to the federal laws on firearms. The regulation of commercial interstate sales became regulated. A licensing requirement was established for dealers, manufacturers, and distributors of guns and ammunition. It also established a ban on sales to certain convicted criminals (Brady Campaign, n.d., *The Federal Firearms Act of 1938*).

In 1939, the United States Supreme Court applied the Second Amendment to a federal firearm statute for the first time as it heard a case involving an arrest made for the interstate transportation of an unregistered short-barreled shotgun from Oklahoma to Arkansas. In *United States v. Miller* (1939), the Court remanded the case and stated:

In the absence of evidence tending to show that possession or use of a ‘shotgun having a barrel of less than 18 inches in length’...has some reasonable relationship to the preservation or efficiency of a well-regulated militia, it cannot be said that the Second Amendment to the Federal Constitution guarantees the right to keep and bear such an instrument, or that the statute violates such constitutional provision. (1939)

The Court avoided making a decision on the Constitutionality of the statute, and as quoted above, created a test on the type of weapon and its relationship to the militia. The Court determined that a short-barreled shotgun was not a militia-type weapon; hence it was not constitutionally protected (NRA-ILA, *Fact Sheet: Federal court cases*, 1999).

With the passage of the *Omnibus Crime Control and Safe Streets Act of 1968*, PL 90-618, the *Gun Control Act of 1968*, 18 U.S.C. § 921 et seq., took effect. This act was very comprehensive and became the foundation for all current federal law on guns.

Among the requirements outlined in 18 U.S.C. § 921 et seq. (1968) are:

- Stricter rules for gun dealers, manufacturers, and importers, including the retention of records of all transactions;
- Made it illegal to alter a serial number on a weapon;
- The banning of mail-order sales of firearms and ammunition;
- A prohibition on the importation of foreign-made military weapons;
- Regulation of the sale of handguns to those at least 21 years of age, and rifles to those at least 18 years of age, and
- Prohibited the possession of weapons by convicted felons.

In 1980, the prohibition against convicted felons was tested with *Lewis v. United States*. In this case, the United States Supreme Court denied certiorari. It was determined that with a felony conviction, even in a state court, comes a loss of several rights of citizenship, including the lawful possession of a weapon (1980).

The federal government in the 1980s passed additional firearms-related legislation. With the passage of PL 99-308, the *Firearms Owners Protection Act* (1986), gun owners were, among other things, protected from the development of a centralized government database of gun ownership. The passage of PL 99-570, known as the *Armed Career Criminal Act* (1986), provided for increased penalties for the use of firearms in the commission of a criminal act.

In 1990, the United States Supreme Court, in *United States v. Verdugo-Urquidez*, makes a statement about the meaning of “the people” as used in several Constitutional amendments, including the Second Amendment. The Court states:

the term ‘the people,’ as used in the Constitution’s First, Second, Fourth, Ninth, and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with the United States to be considered part of that community. (1990)

Finally, the passage of the first *Gun-Free School Zones Act*, 18 U.S.C. § 922, was in 1990. The 1990 *act*, which was eventually determined to be unconstitutional by the United States Supreme Court, took effect in 1991. That particular act, as well as subsequent alternate acts that were similar in scope and purpose to the 1990 act, will be reviewed in the next part of this chapter.

Part Three: The Gun-Free Schools Acts of the 1990s

In response to increased reports of firearms on America's school campuses during the 1980s, the 101st United States Congress introduced a bill to amend title 18 of the United States Code relating to firearms possession. The bill was referred to as the *Gun-Free School Zones Act of 1990*. The purpose of the act was to prohibit the possession or discharge of any firearm within an area on and around school property.

The bill created language defining the area of school and surrounding properties as a "school zone." This zone was defined as "(A) in, or on the grounds of, a public, parochial or private school; or (B) within a distance of 1,000 feet from the grounds of a public, parochial or private school" (*Gun-Free School Zones Act of 1990*). A violation of this part was a felony punishable by a fine up to \$5,000.00 and/or imprisonment up to five years. This new law passed as a part of the *Crime Control Act of 1990* (PL 101-647), and it took effect on January 29, 1991.

In late 1994, the United States Supreme Court heard arguments related to the 1990 act (514 U.S. 549). The case involved a Texas high school student, Alfonso Lopez, Jr., who was arrested and charged under Texas law for carrying a concealed weapon on school property. Through prosecutorial negotiation between Texas and federal officials, state charges were eventually dropped against Mr. Lopez, and he was charged federally under the provisions of the federal *Gun-Free School Zones Act*, 18 U.S.C. 922, et. al. Upon federal conviction, Mr. Lopez was sentenced to six months in jail (Graubard, n.d.).

Mr. Lopez appealed his conviction. He contended that Congress exceeded its authority by creating legislation that prohibited the possession of weapons on school campuses through the Interstate Commerce Clause. The United States Court of Appeals

for the Fifth Circuit agreed with Mr. Lopez and reversed his conviction, and “on certiorari, the United States Supreme Court affirmed” 5-4 the lower court’s ruling (*United States v. Lopez*, 1995). In the opinion written by Chief Justice Rehnquist, the Court stated:

that the Act exceeded the authority of Congress to regulate commerce among the several states under the commerce clause...because (1) the Act is a criminal statute that by its terms has nothing to do with commerce or any sort of economic enterprise, and--since possession of a gun in a local school zone is in no sense an economic activity that might...substantially affect any sort of interstate commerce..., (2) the Act contains no jurisdictional element which would insure that the firearm possession in question affected interstate commerce..., (3) while Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce, to the extent that congressional findings would have enabled the Supreme Court to evaluate the legislative judgment that the possession of a firearm in a local school zone substantially affected interstate commerce, such findings were lacking in the case at hand, and (4) the Supreme Court would not (a) pile inference upon inference in a manner that would bid fair to convert congressional authority under the commerce clause to a general police power of the sort retained by the states, and (b) conclude that there will never be a distinction between what is truly national and what is truly local. (1995)

In this case, the Court made it clear that weapons on school campuses was not a federal matter, but an issue to be dealt with by the states through the enforcement of state-level laws.

Prior to the Supreme Court's ruling in *Lopez*, Congress had passed other gun-free schools initiatives, including the *Gun-Free Schools Act of 1994*. This act, which amended the *Elementary and Secondary Education Act of 1965* (ESEA – 20 U.S.C. § 2701 et seq.), required that any local education agency (LEA) that received ESEA assistance have a policy in place that requires the expulsion of any student who brings a firearm to school. The act required student expulsions to last for at least one year; however, a provision was made for the head of a LEA to make an exception as needed on a case-by-case basis (NRA-ILA, *Fact sheet: School safety*, 1999).

Congress also passed a second provision in 1994. This provision, 20 U.S.C. § 8922, required LEAs receiving federal assistance under the ESEA have in place a policy “requiring referral to the [local] criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.” In effect, the federal government wanted to ensure that prosecutorial discretion pertaining to whether or not criminal charges were to be made against a student would be applied only by the appropriate local criminal justice agency, not the local school system. According to the provision, federal funds under ESEA would be withheld unless the LEA acted in compliance with the federal requirement.

In 1995, Senator Herb Kohl (D-WI), along with Senators Spector (R-PA), Simon (D-IL), Bradley (D-NJ), Lautenberg (D-NJ), Chafee (R-RI), and Kerrey (D-NE), presented a bill to revise the *Gun-Free School Zones Act of 1990*, which was struck down

by the Supreme Court in *Lopez*. The new bill, called *The Gun-Free School Zones Act of 1995*, was to amend title 18 of the United States Code, pertaining to guns and schools. The revision focused on changing the language of the 1990 bill making it apply to any firearm that has been moved across state lines.

While presenting the bill, Senator Kohl stated “The goal of this bill is simple: to heed the Supreme Court’s decision regarding Federal power and yet to continue to fight against school violence. The *Lopez* decision cannot be used as an excuse for complacency” (Kohl, 1995). Senator Kohl stated further that:

In the *Lopez* decision, the Supreme Court held that the original act exceeded Congress’ commerce clause power because it did not adequately tie guns found in school zones to interstate commerce. Much as I disagree with the 5 to 4 decision and strongly agree with the dissenters--Justices Souter, Stevens, Breyer, and Ginsburg--our new legislation will clearly pass muster under the majority’s *Lopez* test. By requiring that the prosecutor prove that the gun brought to school ‘moved in or affected interstate commerce,’ the act is a clear exercise of Congress’ unquestioned power to regulate interstate activities. In fact, the *Lopez* decision itself suggested that requiring an explicit connection between the gun and interstate commerce in each prosecution would assure the constitutionality of the act. (Kohl, 1995)

The final bill was offered in September 1996 as an amendment to the Treasury, Postal Appropriations Bill and was passed by Congress as included in the Omnibus Appropriations bill for fiscal year 1997. Since almost all firearms have crossed state or national political boundaries, practically all firearms are covered under the current law.

The current *Gun-Free Schools Act* is authorized by Public Law 108-6, and is a part of the federal initiative *Strengthening and Improvement of Elementary and Secondary Schools, 21st Century Schools, Safe and Drug-Free Schools and Communities: Gun Possession* (20 U.S.C. § 7151, 2003). The current *Act* remains essentially the same as previous implementations. The requirements include that each state that receives Federal funding through any part of 20 U.S.C. §§ 6301 et seq. have in effect a state law that requires LEAs to expel for not less than one year any student determined to have brought or possessed a firearm at school. States, however, have the discretion to allow chief administering officers of LEAs to modify the expulsion requirement on a case-by-case basis (20 U.S.C. § 7151 (b) (2)). A special rule (20 U.S.C. § 7151 (c)) provides that the provisions of the section shall be interpreted consistent with the *Individuals with Disabilities Education Act* (IDEA). Finally, each State education agency is to report the following in any request for Federal funding:

- An assurance that such local educational agency is in compliance with the State law required by subsection (b) [requiring a mandatory one year expulsion] (20 U.S.C. § 7151 (d) (1))
- A description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b), including the name of the school concerned, the number of students expelled from such school, and the type of firearms concerned (20 U.S.C. § 7151 (d) (2))
- Each State shall report the information described in subsection (d) to the Secretary on an annual basis (20 U.S.C. § 7151 (e)), and

- No funds shall be made available under any title of this *Act* to any LEA unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to school served by such agency (20 U.S.C. § 7151 (h) (1)).

As a result of these various federal school zone acts passed by Congress, Georgia laws pertaining to school safety zones required revision, as well as the adoption of new laws, in several areas to remain in compliance with federal requirements. Furthermore, due to the provisions of the *Gun-Free Schools Act*, the revisions were necessary in order that Georgia would continue to receive federal money under the ESEA.

Part Four: The Laws of Georgia Pertaining to the General Possession of Weapons

Prior to the development and passage of a code section specifically addressing weapons in Georgia's school safety zones (O.C.G.A. § 16-11-127.1), Georgia code § 16-11-126 and § 16-11-127 served as the state criminal code sections primarily used by state and local law enforcement officials and prosecutors to regulate the possession and carrying of weapons within the state. Code § 16-11-126 pertains to the carrying of a concealed weapon. It specifically defines a weapon as "any bludgeon, metal knuckles, firearm, knife designed for the purpose of offense and defense, or any other dangerous or deadly weapon or instrument of like character."

Code § 16-11-126 defines concealed carry of a weapon as when "a person...knowingly has or carries..., unless in an open manner and fully exposed to view," any of the items stated to be a weapon. Statutorily exempt from the charge of carrying a concealed weapon are incidences when these items are carried in one's home

or place of business. The code section also specifies that carrying a concealed firearm “outside of his or her home, motor vehicle, or place of business,” unless the person is licensed under the provisions of Georgia code § 16-11-129, is not permitted and thus illegal.

A provision is provided by § 16-11-126 allowing individuals who are otherwise eligible to possess weapons in Georgia to keep “a loaded firearm in any private passenger motor vehicle in an open manner and fully exposed to view or in the glove compartment, console, or similar compartment of the vehicle.” Individuals licensed under § 16-11-129 may carry a handgun (specifically stated as “handgun,” as opposed to “firearm,” in O.C.G.A. § 16-11-126) in any location in a motor vehicle. A final provision of § 16-11-126 allows firearms license reciprocity between Georgia and other states that recognize the Georgia Firearms License. The provision reads:

a person licensed to carry a handgun in any state whose laws recognize and give effect within such state to a license issued pursuant to this part shall be authorized to carry a handgun in this state, but only while the licensee is not a resident of this state; provided, however, that such license holder shall carry the handgun in compliance with the laws of this state. (2002)

Restrictions are placed on the manner that an individual licensed under § 16-11-129 may carry the firearm. Code § 16-11-126 states it “may only be carried in a shoulder holster, waist belt holster, any other holster, hipgrip, or any other similar device, in which event the weapon may be concealed by the person’s clothing, or a handbag, purse, attaché case, briefcase, or other closed container.”

A first-time violation of § 16-11-126 is a misdemeanor. All subsequent violations are considered felony offenses, which, upon conviction, are punishable by imprisonment for a term between two and five years.

O.C.G.A. § 16-11-127 regulates the carrying of deadly weapons to or at public gatherings. Compared to § 16-11-126, the definition of a weapon found in § 16-11-127 includes only explosive compounds, firearms, and certain knives. The code section states that:

Except as provided in Code Section 16-11-127.1, [which pertains to carrying weapons within school safety zones,] a person is guilty of a misdemeanor when he carries to or while at a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and defense. (2002)

In part (b) of O.C.G.A. § 16-11-127, the term “public gathering” is defined as including, but not being limited to, “athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises.”

Some confusion has surrounded the interpretation of “public gathering” as used in O.C.G.A. § 16-11-127. The Court of Appeals of Georgia provides additional guidance as to the meaning in *State v. Burns* (1991). The court reviewed a case related to an individual who was arrested for carrying a firearm while dining at a McDonald’s restaurant in Gwinnett County, Georgia. Originally charged with carrying a concealed weapon (O.C.G.A. § 16-11-126), the charge was changed to carrying a deadly weapon to a public gathering (O.C.G.A. § 16-11-127) when it was discovered that the individual was licensed to carry a firearm in Georgia under O.C.G.A. § 16-11-129. The appellee

motioned to dismiss stating that a McDonald's restaurant is not a public gathering under the statute. The trial court granted the motion, and the State appealed.

In this particular case, the Court of Appeals draws a distinction between those places where people "are gathered or will be gathered for a particular function" and other places "where people may gather" (*State v. Burns*, 1991). In effect, as pointed out in a 1996 Georgia Attorney General opinion that refers to the case, the Court of Appeals is stating that the focus is on the gathering of people, and not on the specific place, when referring to a "public gathering" under O.C.G.A. § 16-11-127 (Childers, 1996).

The Georgia Attorney General has also issued other earlier opinions on this subject. In a 1976 opinion (Bolton), the Georgia Attorney General clarifies the meaning of a "publicly owned or operated building" as used in O.C.G.A. § 16-11-127. The opinion, which was written in response to a question from a Fulton County Probate Judge, states:

Based upon this definition [provided by a Georgia court in *Collum v. State*, 109 Ga. 531 (1899)], department stores and convenience food establishments would not qualify as a publicly owned or operated building.

It is therefore my unofficial opinion that a publicly owned or operated building is one which houses governmental functions, and which is either owned by the government or its agency, or is leased with taxpayer money for the use by the government or one of its agencies. (Bolton, 1976)

In a subsequent related opinion, the Georgia Attorney General addressed the carrying of a firearm by a licensed individual in other public places, specifically in a shopping mall. The opinion stated:

it is my unofficial opinion...that a person who has properly obtained a license to carry a pistol or revolver [in Georgia] under O.C.G.A. § 16-11-129 may carry a pistol or revolver at a shopping mall without violating O.C.G.A. § 16-11-127, which prohibits the carriage of firearms to or while at a public gathering. Please be advised that this opinion does not address the legality of carrying a firearm with a license to a shopping mall at which at least one of the activities enumerated in the statute [O.C.G.A. § 16-11-127] as a ‘public gathering’ occurs.

(Hackemeyer, 1984)

The “public gathering” referred to in the 1984 opinion would be any of those activities or locations specifically stated as prohibited places to carry a firearm in O.C.G.A. § 16-11-127, which include “athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises.” An amendment by the Georgia Legislature, which became law in July 1997, added additional language to § 16-11-127 to address confusion about its original meaning of a “public gathering.” The new language states, “Nothing in this Code section shall otherwise prohibit the carrying of a firearm in any other public place by a person licensed or permitted to carry such firearm by this part.”

O.C.G.A. § 16-11-127 provides a list of persons who are specifically exempted from the provisions prohibiting deadly weapons at public gatherings. According to part (c), the code section does not apply to “competitors participating in organized sport shooting events...[, law] enforcement officers, peace officers retired from state or federal

law enforcement agencies, judges, magistrates, solicitors-general, and district attorneys may carry pistols in publicly owned or operated buildings.”

Finally, O.C.G.A. § 16-11-184 (2002) regulates the authority of political subdivisions within Georgia to control the possession of firearms. Due to this preemption, firearms laws regulating possession throughout Georgia are uniform. The code section states that the Georgia “General Assembly [declares] that the regulation of firearms is properly an issue of general, state-wide concern” (O.C.G.A. § 16-11-184 (a) (1), 2002). The code section prohibits local governments throughout the state from enacting local legislation designed to regulate firearms. O.C.G.A. § 16-11-184 (b) (1) states:

No county or municipal corporation, by zoning or ordinance, resolution, or other enactment, shall regulate in any manner gun shows, the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms, components of firearms, firearms dealers, or dealers in firearms components.
(2002)

Although state law prohibits local governments from enacting local legislation to regulate firearms, local governments are not prohibited from regulating the possession of weapons by employees of local government while in the course of their employment with local government (O.C.G.A. § 16-11-184 (c), 2002). Furthermore, a provision in the state law allows local governments to enact local legislation requiring gun ownership by the head of each household within the jurisdiction of that particular local government (O.C.G.A. § 16-11-184 (d), 2002).

Part Five: The Development of Georgia Laws Regulating
Weapons Possession in School Safety Zones

Before 1992, carrying a weapon to or near a public school campus in Georgia was treated the same as carrying a weapon at any other publicly owned facility. For a first-time offender, a violation of O.C.G.A. § 16-11-127 was a misdemeanor. Furthermore, the language that defines a weapon under § 16-11-127 is construed by some to be vague and not necessarily descriptive of many of the items students may utilize as a weapon. In addition, a violation of O.C.G.A. § 16-11-127 pertains only to the carrying of a weapon in a building that is “publicly owned or operated” (2002).

The requirements of the various gun-free schools acts prompted the eventual passage of additional Georgia laws pertaining to schools. Georgia code § 20-2-751.1 required local boards of education to “establish a policy requiring the expulsion from school for a period of not less than one calendar year of any student who is determined...to have brought a weapon to school” (O.C.G.A. § 20-2-751.1 (a)). Per federal guidelines, part (b) of the Georgia code allowed local boards of education “the authority to modify such expulsion requirement...on a case-by-case basis.” In part (c) of the code section, local boards of education are granted the authority to place students who bring weapons to school in “alternative” educational settings for the period of the expulsion. Finally, a clause protecting rights certain students may have under the federal *Individuals with Disabilities Act*, § 504, or the federal *Americans with Disabilities Act* is included in part (d) of the code section.

Federal requirements also prompted the passage of O.C.G.A. § 20-2-1184. This code section requires principals to report students suspected or known to have violated

certain code sections, including O.C.G.A. § 16-11-127 and § 127.1, to the school superintendent, as well as local law enforcement and the local district attorney.

To further regulate the possession of weapons specifically on or around school campuses and properties, in school-owned vehicles, and at school sponsored events, O.C.G.A. § 16-11-127.1 was created (1992). Introduced to the Georgia Senate Committee on Education by State Senators Newbill and Clay during the 1992 Regular Session on February 3, Senate Bill 563 (S.B. 563) was intended to change the state laws pertaining to the possession of weapons on school property. The bill passed the Georgia General Assembly and was signed by Governor Zell Miller on April 13, 1992.

The bill amended Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, which regulates the carrying and possession of weapons. As passed, S.B. 563 states:

Section 1. Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms and weapons, is amended by striking Code Section 16-11-127, relating to carrying weapons to public gatherings, and inserting in place thereof a new Code section to read as follows:

16-11-127. (a) Except as provided in Code Section 16-11-127.1, a person is guilty of a misdemeanor when he carries to or while at a public gathering any explosive compound, firearms, or knife designed for the purpose of offense and defense.

(b) For the purpose of this Code section, 'public gathering' shall include, but shall not be limited to, athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or

establishments at which alcoholic beverages are sold for consumption on the premises.

(c) This Code section shall not apply to competitors participating in organized sport shooting events. Law enforcement officers, peace officers retired from state or federal law enforcement agencies, judges, magistrates, solicitors, and district attorneys may carry pistols in publicly owned or operated buildings.

Section 2. Said part is further amended by adding immediately following Code Section 16-11-127 a new Code section to read as follows:

16-11-127.1 (a) It shall be unlawful for any person to carry to or to possess or have under such person's control while at a school building, school function, or school property or on a bus or other transportation furnished by the school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25. Any person who violates this subsection shall, upon conviction thereof, be punished by a fine of not more than \$5,000.00, by imprisonment for not less than one nor more than five years, or by both.

(b) For the purposes of this Code section, the term 'weapon' means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of three or more inches, straight-edge razor, spring stick, metal knucks, blackjack, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades

which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind.

(c) The provisions of this Code section shall not apply to:

(1) Competitors while participating in organized sport shooting events; (2)

Person participating in military training programs conducted by or on behalf of the armed forces of the United States or the Georgia

Department of Defense; (3) The following persons, when acting in the performance of their official duties or when en route to or from their official duties:

(A) A peace officer as defined by Code Section 35-8-2;

(B) A law enforcement officer of the United States government;

(C) A prosecuting attorney of this state or of the United States;

(D) An employee of the Georgia Department of Corrections or a correctional facility operated by a political subdivision of this state or the United States who is authorized by the head of such correctional agency or facility to carry a firearm; and

(E) A person employed as a campus police officer or school security officer who is authorized to carry a weapon in accordance with Chapter 8 of Title 20;

(4) A person who has been authorized in writing by a duly authorized official of the school to have in such person's possession or use as part of any activity being conducted at a school building, school property, or school function a weapon which would otherwise be prohibited by this

Code section. Such authorization shall specify the weapon or weapons which have been authorized and the time period during which the authorization is valid;

(5) A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10, when such person carries or picks up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school;

(6) A weapon which is in a locked container in or a locked firearms rack which is on a motor vehicle which is used to bring to or pick up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school, or when such vehicle is used to transport someone to an activity being conducted on school property which has been authorized by a duly authorized official of the school;

(7) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon is necessary for manufacture, transport, installation, and testing under the requirements of such contract;

(8) Those employees of the State Board of Pardons and Paroles when specifically designated and authorized in writing by the members of the State Board of Pardons and Paroles to carry a weapon;

(9) The Attorney General and those members of his staff whom he specifically authorizes in writing to carry a weapon;

(10) Probation supervisors employed by and under the authority of the

Department of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the ‘State-wide Probation Act,’ when specifically designated and authorized in writing by the director of Division of Probation;

(11) Public safety directors of municipal corporations; and

(12) Trial judges.

Section 3. All schools shall post in public view the provisions as contained in §16-11-127.1 (a) and (b).

Section 4. All laws and parts of laws in conflict with this Act are repealed. (1992)

Several changes to O.C.G.A. § 16-11-127.1 were made in 1993 as a part of Georgia House Bill 1100 (H.B. 1100), which was introduced by Georgia Representatives Shipp, Atkins, Coker, Hammond, and Culbreth. Georgia Governor Zell Miller approved H.B. 1100 on March 29, 1994. The changes provided clarity to the definition of a weapon, as well as additional exemptions to the law.

With the passage of H.B. 1100, the definition of a weapon according to O.C.G.A. § 16-11-127.1 was expanded to include “any bat, club, or other bludgeon-type weapon” (1993). Additionally, exemptions were provided for athletic competitors possessing items of this nature as a part of sporting events.

A complete revision was made to O.C.G.A. § 16-11-127.1 during the 1994 regular session as a part a bill referred to as the *School Safety and Juvenile Justice Reform Act of 1994* (1994). The new code section was similar in intent and wording to the former code section; however, it provided additional clarity to definitions within the law, more exceptions and exemptions (including an exemption for school personnel), and

increased penalties for violators. It also included Georgia's first legal definition of a school safety zone.

The complete revision of O.C.G.A. § 16-11-127.1 read as follows:

(a) As used in this Code section, the term:

(1) 'School safety zone' means in, on, or within 1,000 feet of any real property owned by or leased to any public or private elementary school, secondary school, or school board and used for elementary or secondary education and in, on, or within 1,000 feet of the campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education.

(2) 'Weapon' means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of three or more inches, straight-edge razor, spring stick, metal knucks, blackjack, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106.

(b) Except as otherwise provided in subsection (c) of this Code section, it shall be unlawful for any person to carry to or to possess or have under such person's control while within a school safety zone or at a school building, school function, or school property or on a bus or other transportation furnished by the school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not more than \$10,000.00, by imprisonment for not less than two nor more than ten years, or both. A juvenile who violates this subsection shall be subject to the provisions of Code Section 15-11-37.

(c) The provisions of this Code section shall not apply to:

- (1) Participants in organized sport shooting events or firearm training courses;
- (2) Persons participating in military training programs conducted by or on behalf of the armed forces of the United States or the Georgia Department of Defense;
- (3) Persons participating in law enforcement training conducted by a police academy certified by the Peace Officer Standards and Training Council or by a law enforcement agency of the state or the United States or any political subdivision thereof;
- (4) The following persons, when acting in the performance of their official duties or when en route to or from their official duties:

- (A) A peace officer as defined by Code Section 35-8-2;
 - (B) A law enforcement officer of the United States government;
 - (C) A prosecuting attorney of this state or of the United States;
 - (D) An employee of the Georgia Department of Corrections or a correctional facility operated by a political subdivision of this state or the United States who is authorized by the head of such correctional agency or facility to carry a firearm;
 - (E) A person employed as a campus police officer or school security officer who is authorized to carry a weapon in accordance with Chapter 8 of Title 20; and
 - (F) Medical examiners, coroners, and their investigators who are employed by the state or any political subdivision thereof;
- (5) A person who has been authorized in writing by a duly authorized official of the school to have in such person's possession or use as part of any activity being conducted at a school building, school property, or school function a weapon which would otherwise be prohibited by this Code section. Such authorization shall specify the weapon or weapons which have been authorized and the time period during which the authorization is valid;
- (6) A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10, when such person carries or picks up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school

or any weapon legally kept within vehicle in transit through a designated school zone by any person other than a student;

(7) A weapon which is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle which is being used by an adult over 21 years of age to bring to or pick up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school, or when such vehicle is used to transport someone to an activity being conducted on school property which has been authorized by a duly authorized official of the school; provided, however, that this exception shall not apply to a student attending such school;

(8) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon is necessary for manufacture, transport, installation, and testing under the requirements of such contract;

(9) Those employees of the State Board of Pardons and Paroles when specifically designated and authorized in writing by the members of the State Board of Pardons and Paroles to carry a weapon;

(10) The Attorney General and those members of his or her staff whom he or she specifically authorizes in writing to carry a weapon;

(11) Probation supervisors employed by and under the authority of the Department of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide Probation Act,' when specifically designated

and authorized in writing by the director of Division of Probation;

(12) Public safety directors of municipal corporations;

(13) Trial judges;

(14) United States attorneys and assistant United States attorneys;

(15) Clerks of the superior courts; or

(16) Teachers and other school personnel who are otherwise authorized to possess or carry weapons, provided that any such weapon is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle.

(d)

(1) This Code section shall not prohibit any person who resides or works in a business or is in the ordinary course transacting lawful business or any person who is a visitor of such resident located within a school safety zone from carrying, possessing, or having under such person's control a weapon within a school safety zone; provided, however, it shall be unlawful for any such person to carry, possess, or have under such person's control while at a school building or school function or on school property, a school bus, or other transportation furnished by the school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25.

(2) Any person who violates this subsection shall be subject to the penalties specified in subsection (b) of this Code section.

(3) This subsection shall not be construed to waive or alter any legal

requirement for possession of weapons or firearms otherwise required by law.

(e) It shall be no defense to a prosecution for a violation of this Code section that:

- (1) School was or was not in session at the time of the offense;
- (2) The real property was being used for other purposes besides school purposes at the time of the offense; or
- (3) The offense took place on a school vehicle.

(f) In a prosecution under this Code section, a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of the real property of a school board or a private or public elementary or secondary school that is used for school purposes or within 1,000 feet of any campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education, or a true copy of the map, shall, if certified as a true copy by the custodian of the record, be admissible and shall constitute prima-facie evidence of the location and boundaries of the area, if the governing body of the municipality or county has approved the map as an official record of the location and boundaries of the area. A map approved under this Code section may be revised from time to time by the governing body of the municipality or county. The original of every map approved or revised under this subsection or a true copy of such original map shall be filed with the municipality or county and shall be maintained as an official record of the municipality or county. This subsection shall not preclude the prosecution from introducing or relying upon any other

evidence or testimony to establish any element of this offense. This subsection shall not preclude the use or admissibility of a map or diagram other than the one which has been approved by the municipality or county.

(g) A county school board may adopt regulations requiring the posting of signs designating the areas within 1,000 feet of school boards and private or public elementary and secondary schools as ‘Weapon-free and Violence-free School Safety Zones.’ (1994)

In 1999, an additional amendment was made to O.C.G.A. § 16-11-127.1 to expand the definition of a weapon. Any knife with a blade of two or more inches was included among items defined as a weapon (formerly knives had to have a blade of three or more inches to be defined as a weapon). In addition to the change in blade length, the term “razor blade” was added to the paragraph legally defining a weapon.

In 2000, minor administrative changes to the law were made. The first change was the term “child” replacing the term “juvenile” as pertaining to violators of the law. The second change replaced “O.C.G.A. § 15-11-37” with “O.C.G.A. § 15-11-63” relating to how juvenile offenders were to be adjudicated.

The specific exemptions, provisions, and definitions included in the current version of O.C.G.A. § 16-11-127.1 (2002) will be examined and addressed at length in chapter three of this dissertation.

CHAPTER 3
DESCRIPTIVE LEGAL ANALYSIS OF CURRENT GEORGIA
LAW AND POLICY

This chapter presents a descriptive analysis of the current status of O.C.G.A. § 16-11-127.1 and related state code sections. Part one contains a comprehensive examination detailing the legal definition of a school safety zone, as well as the code section's explanation of what constitutes a weapon. The second part of this chapter is an analysis of the jurisdiction and application of Georgia code § 16-11-127.1. Part three examines the numerous legally defined exemptions and exceptions to the law. The fourth part reviews the enforcement and implementation guidelines of the code section. Finally, part five details the relationship of § 16-11-127.1 with § 20-2-751.1, Georgia's zero tolerance law requiring the mandatory expulsion of students with weapons at school.

Definitions of School Safety Zone and Weapons

O.C.G.A. § 16-11-127.1 regulates the carrying of a variety of items defined as weapons within school safety zones, to or at school functions, on school property, and in vehicles owned by the school. A school safety zone is currently defined as:

in, on, or within 1,000 feet of any real property owned by or leased to any public or private elementary school, secondary school, or school board and used for elementary or secondary education and in, on, or within 1,000 feet of the campus

of any public or private technical school, vocational school, college, university, or institution of postsecondary education. (2002)

This law clearly applies to property of all public and private schools of any type, including postsecondary institutions such as universities, colleges, or technical schools. Other property owned by school systems that may not be used directly for instruction, such as bus garages and off-campus administrative facilities, is included. This code also extends the school safety zone to include anything within 1,000 feet, an area greater than three football fields, surrounding any included properties.

This description of a school safety zone also defines the legal territorial jurisdiction of school law enforcement for any campus police officer, such as an officer of a school board or college police department. Territorial jurisdiction is defined as “Territory over which a government, one of its courts, or one of its subdivisions has jurisdiction” (Garner et al., p. 857, 1999). Jurisdiction in this instance is statutorily limited to school property and all other property within the 1,000-foot geographic boundary. The definition of this special type of law enforcement officer with jurisdiction generally limited to a school safety zone is addressed later in chapter three.

Concerning the legal definition of a weapon, paragraph (2) of subsection (a) specifically defines the term as:

any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring stick, metal knucks, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a

manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106. (2002)

Subsection (a) of O.C.G.A. § 16-11-106 (2002) states that the stun gun and taser are considered firearms. These items are defined in the statute as “any device that is powered by electrical charging units such as batteries and emits an electrical charge in excess of 20,000 volts or is otherwise capable of incapacitating a person by an electrical charge.”

A wide range of items that could be used as weapons are included within the wording of subsection (2) of this code. This wide-ranging and inclusive definition is advantageous for prosecutors making a case against individuals possessing weapons within school safety zones who intend to harm others. With the 1992 implementation of § 16-11-127.1, the Georgia General Assembly and Governor had the foresight to recognize that items not typically thought of as weapons, such as small utility knives or razors, may be successfully used to harm or kill. The world later learned of the potential danger of innocuous items of this nature on September 11, 2001, as reports of airliners that were hijacked by terrorists armed only with “box cutters, razors and possibly small knives” were made public (*Flight 11 attendant reported events*, 2001).

O.C.G.A. § 16-11-127.1 addresses the vagueness of the various defined weapons listed in O.C.G.A. § 16-11-126 and § 16-11-127. According to those code sections, only knives designed for the purpose of offense and defense are specifically prohibited in

public places. Certain knives, such as a hunting knife with an 8-inch blade not designed for offense or defense, may not necessarily be a weapon under those code sections. The inclusive definition provided by O.C.G.A. § 16-11-127.1, though, clearly prohibits any knife with a blade two inches or greater in length in a school safety zone.

The wide-ranging definition of items prohibited in school safety zones, however, also opens the door to potential arrest and prosecution of students and citizens possessing common household items on or within 1,000 feet of school property. One recent Georgia arrest was made during a consensual search of a high school student's car parked in the school's parking area. A school resource officer at the high school found a "kitchen knife with a 5-¼ inch blade" in the 18-year-old student's car (Finnicum, 2003, p. 1A).

Although the student stated that he forgot that the knife was in the automobile, and he had he not made any threatening remarks about using the knife, he was arrested and charged with a weapons violation (Finnicum, 2003). Under O.C.G.A. § 16-11-127.1, an arrest made for a kitchen knife found in a parked car located in a school parking area is a felony. Under Georgia law, certain rights of citizenship are revoked after a felony conviction, which makes this charge extremely serious.

A similar search of most any automobile parked in a school parking lot would reveal many objects considered weapons under § 16-11-127.1. All newly manufactured automobiles are provided with a lug wrench or jack handle; these two items may be effectively utilized as bludgeon-type weapons. In addition, many people keep items in car tool kits, such as screwdrivers and pocketknives, which are illegal under § 16-11-127.1. Certain flashlights frequently kept in cars for emergencies, such as aluminum

“Mag-Lights,” which are routinely carried by police officers in lieu of a police baton, may be effectively used as bludgeon-type weapons.

It may be argued that these items, such as metal flashlights and jack handles, have legitimate uses but may also, like most any object, be used as a weapon. Baseball bats, and hockey sticks may also be potential weapons with legitimate uses; however, these items, unlike metal flashlights and jack handles, are specifically exempted in the law. Therefore, any student with any of these non-exempted bludgeon-type items in their automobile, regardless of his or her age, is subject to felony arrest under § 16-11-127.1.

Although the legislative intent of the Georgia General Assembly cannot be determined, it could be argued that they did not intend for arrests to be made solely for possessing common household items in a school safety zone that are otherwise legal to possess anywhere else in the state. Contained within paragraph (2) of subsection (a) of § 16-11-127.1 is a common-sense provision exempting any of the items defined as a weapon if the teacher permits them for use in the classroom. The exemption states: “This paragraph excludes any of these instruments used for classroom work authorized by the teacher” (2002). Examples of the application of this exemption would be students who legitimately possess a dissection knife for a lab exercise during biology class, students using a knife during a cooking exercise in a family and consumer science class, as well as students with a utility knife used as a part of an assignment in a vocational class.

Explosive compounds are also prohibited within school safety zones. The definition of an explosive compound excludes fireworks, which are otherwise regulated by Chapter 10 of Title 25 of the Official Code of Georgia Annotated.

Jurisdiction and O.C.G.A. § 16-11-127.1

Subsection (b) of § 16-11-127.1 defines the parameters for sentencing and expands the areas that are generally off-limits for weapons possession. Beyond those areas defined as a part of the school safety zone in subsection (a), subsection (b) states that any school sponsored transportation is a protected area. According to subsection (b), it shall be unlawful:

to carry to or to possess or have under such person's control while within a school safety zone or at a school building, school function, or school property or on a bus or other transportation furnished by the school any weapon or explosive compound. (2002)

A violation of § 16-11-127.1 is a felony with mandatory, statutorily prescribed sentencing. A fine of up to \$10,000.00, or imprisonment for not less than two years nor more than ten years, or both are required for those found guilty of violating the law by possessing any weapon other than a firearm. A conviction of § 16-11-127.1 involving the possession of a firearm or dangerous weapon as defined by § 16-11-131 or § 16-11-121 raises the sentencing requirements to include a fine of \$10,000.00, or imprisonment for not less than five years nor more than ten years, or both. Children found to be in violation of O.C.G.A. § 16-11-127.1 are subject to the provisions of O.C.G.A. § 15-11-63, which is the law regulating the adjudication and disposition of crimes committed by juveniles in Georgia.

The primary difference between illegally possessing a weapon in a school safety zone or on school transportation and illegally possessing a weapon in any other public place is the degree of punishment after a conviction. As outlined in O.C.G.A. § 16-11-

126, a conviction for the first offense of carrying a concealed weapon outside of one's home, vehicle, or place of business is punished as a misdemeanor, unless that person has a valid license issued under O.C.G.A. § 16-11-129. O.C.G.A. § 16-11-127 (not 127.1) defines the carrying of "any explosive compound, firearm, or knife designed for the purpose of offense and defense" to public gatherings (church functions, political functions, establishments selling alcohol for consumption on the premises, sporting events, or publicly owned or operated buildings) as a misdemeanor. This includes anyone, except certain exempted government officials, including persons with a valid license issued under O.C.G.A. § 16-11-129.

The inside part of public school buildings would certainly fall under the prohibition clause "publicly owned or operated building" as defined in O.C.G.A. § 16-11-126. School sports events that are held outdoors, such as football or baseball games, would be covered under the clause prohibiting the carrying of weapons at sporting events. However, O.C.G.A. § 16-11-127(b) continues by adding, "nothing in this section shall otherwise prohibit the carrying of a firearm, in any other public place by a person licensed or permitted to carry such firearm by this part" (2003). Without O.C.G.A. § 16-11-127.1, it may be inferred that other public places not specifically prohibited, such as public school parking lots and playgrounds, would be locations legal to carry a firearm if licensed under O.C.G.A. § 16-11-129.

O.C.G.A. § 16-11-126 states an individual can carry a weapon in their place of business. Without clarification as provided in § 16-11-127.1, private schools may not necessarily be considered "publicly owned or operated" buildings under the specific wording of code section 16-11-127. Without § 16-11-127.1, it may be inferred that

employees could carry weapons. Furthermore, § 16-11-126 makes no mention of specific privately owned vehicles, such as school buses or vans, used to transport private school students. Without the clarification provided in § 16-11-127.1, it may be inferred that these vehicles would be areas of legal weapons possession.

Finally, there is vagueness when defining various types of weapons listed in § 16-11-126 and § 16-11-127. Only knives “designed for the purpose of offense and defense” are specifically prohibited in public places (O.C.G.A. § 16-11-126, 2003). § 16-11-127.1 (a) and (b) clarifies each of these questions, and places legal perspective on the definition of a weapon. The code section does not specify a knife used for offense or defense, but specifically mentions a knife having a blade of two or more inches, which is more precise and less problematic for law enforcement officers and prosecutors.

Legally Defined Exemptions and Exceptions

In addition to the first exemption permitting items designated as weapons when authorized by the teacher, § 16-11-127.1 describes numerous additional exemptions and exceptions. According to subsection (c) of § 16-11-127.1, the provisions of the code section shall not apply to a variety of individuals under varying circumstances.

Paragraph (1) exempts school athletes who possess sports equipment, such as baseball bats or hockey sticks, while competing in legitimate sporting events. This particular exemption protects coaches, teachers, students, and others from arrest and possible conviction while otherwise legally using items potentially deemed as a weapon.

Paragraph (2) exempts those “Participants in organized sport shooting events or firearm training courses” allowing the ability to legally possess a weapon on school

property or within a school safety zone during legitimate competition or training. These exemptions would protect members of school rifle teams, participants of firearms and weapons training classes held at schools or on school property, and those participating in sport shooting events held within school safety zones from arrest and possible conviction under this code section.

Paragraph (2) does not specifically define who has to sponsor such events, hence it is inferred that the school may not necessarily sponsor these programs. For example, the school facility might be used after hours to teach a hunter safety program, which may include firearms training, by an outside organization such as the Department of Natural Resources. Since they are not necessarily affiliated with a military organization, school Reserve Officer Training Corps (R.O.T.C.) programs would be protected under this exemption while receiving firearms training or drill instruction.

Subsection (c), paragraph (4) of O.C.G.A. § 16-11-127.1 exempts “Persons participating in military training programs conducted by or on behalf of the armed forces of the United States or the Georgia Department of Defense” from violating the code. It should be noted that concerning O.C.G.A. § 16-11-127.1, this exemption applies only to personnel actually participating in military training. As stated by the Georgia Attorney General in an unofficial opinion pertaining to the possession of weapons by military personnel, “Under Georgia law, active duty military personnel are exempted from the requirement of a firearms permit. The exemption is not limited to the performance of military duty” (Childers, 1997). The opinion further states that these military personnel are:

exempted not only from the requirement of a permit to carry a firearm..., but [military personnel] are also exempt from the provisions regarding the carrying of concealed weapons..., carrying deadly weapons to or at public gatherings..., and carrying weapons within school safety zones or at school functions..., [however,] O.C.G.A. § 16-11-127.1...appears to limit the exemption [in school safety zones] to persons actually participating in military programs. (Childers, 1997)

Law enforcement officers, those participating in law enforcement training, certain officers of the court, certain corrections officers, campus police and security officers, medical examiners, and coroners are exempt from the provisions of O.C.G.A. § 16-11-127.1. According to paragraph (5) of subsection (c):

The following persons, when acting in the performance of their official duties or when en route to or from their official duties:

- (A) A peace officer as defined by Code Section 35-8-2;
- (B) A law enforcement officer of the United States government;
- (C) A prosecuting attorney of this state or of the United States;
- (D) An employee of the Georgia Department of Corrections or a correctional facility operated by a political subdivision of this state or the United States who is authorized by the head of such correctional agency or facility to carry a firearm;
- (E) A person employed as a campus police officer or school security officer who is authorized to carry a weapon in accordance with Chapter 8 of Title 20; and
- (F) Medical examiners, coroners, and their investigators who are employed by the state or any political subdivision thereof. (2002)

Individuals working in these positions are authorized by virtue of their position or office in local, state, or federal government to carry or possess firearms. It should be noted, though, that this exemption extends only to these personnel while functioning in their official capacity. Peace officers as defined in O.C.G.A. § 35-8-2, which are included in subparagraph (A) of paragraph (5) of subsection (c) of O.C.G.A. § 16-11-127.1, are defined as both active and retired certified law enforcement officers of federal, state, or state political subdivisions (city and county law enforcement officers).

Paragraph (6) of subsection (c) of O.C.G.A. § 16-11-127.1 allows “a duly authorized official of the school” to permit the possession of weapons otherwise prohibited in subsection (a). Authorization from the school must be in writing, and it must specify the authorized weapon(s), as well as the specific time the authorization is valid. School administrators could utilize this provision to provide exemptions for a variety of reasons. For example, items otherwise prohibited by O.C.G.A. § 16-11-127.1 that have an educational purpose, such historical or ceremonial weapons, could be authorized for display or presentation at school.

Paragraph (7) of subsection (c) of O.C.G.A. § 16-11-127.1 provides limited exemptions for persons licensed under O.C.G.A. § 16-11-129, the code regulating the issuance of firearms licenses to qualifying citizens by a county probate court, or permitted to carry a weapon under O.C.G.A. § 43-38-10, which is the code regulating the issuance of permits to private detectives and security guards. Persons licensed or permitted under either of these provisions are exempt from O.C.G.A. § 16-11-127.1 whenever “such person carries or picks up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school” (2002).

The exemption also applies to “any weapon legally kept within a vehicle in transit through a designated school zone” by persons licensed under O.C.G.A. § 16-11-129 or permitted under O.C.G.A. § 43-38-10 (2002).

Misunderstanding relating to this particular exemption provided by O.C.G.A. § 16-11-127.1 seems common. Some misunderstanding about the legalities of guns at school and permissible carry by citizens is likely because state law is widely varied, and as a result, specifics about the law are easily confused during any comparison. Other understated motives for promoting a misunderstanding of law in this area may be less clear. For example, according to the Internet website of the Brady Campaign, a national organization interested in the prevention of gun violence through the legislative restriction and prohibition of guns, the:

State law [of Georgia] allows people to carry guns into public schools and onto school buses while they are transporting, picking up, or dropping off students, if they have a CCW [(concealed carry weapon)] permit. Parents should know that loaded handguns may be legally brought onto school grounds by people with concealed carry permits. (Brady Campaign, n.d., *Legislation: Georgia*)

Neither sentence quoted from the Brady Campaign is completely accurate.

Although the last sentence that handguns may be legally brought onto school grounds by people with concealed carry permits is correct, according to Georgia law, it does not apply to the licensed or permitted population at large, as implied on the website. Instead, the exemption applies only “when such person carries or picks up a student at a school building, school function, or school property, or on a bus” (O.C.G.A. § 16-11-127.1 (c))

(7), 2002). In other words, the exemption only applies when the person has a reason to be on campus – it is not Carte Blanc permission to go armed on campus at all times. Concerning the first quoted sentence, a close examination of O.C.G.A. § 16-11-127.1 reveals that parents and guardians picking up their children, as well as other individuals, who have a firearms license or permit are authorized to possess weapons described in subsection (a) paragraph (2) of § 16-11-127.1 while inside a school safety zone. The law does not grant authority, however, for entry “into public schools” or “onto school buses” as stated on the Brady website (Brady Campaign, *Legislation: Georgia*, n.d.). In addition, the law specifically states that this exemption shall apply only to a person “other than a student” (O.C.G.A. § 16-11-127.1 (c) (7), 2002). Even if the student is licensed under § 16-11-129 or permitted under § 43-38-40, he or she is not exempted from O.C.G.A. § 16-11-127.1.

Georgia code § 16-11-127.1 prompted schools throughout the state to develop policies pertaining to the possession of weapons. A current university policy on weapons states:

WEAPONS NOT ALLOWED ON CAMPUS – Under Georgia Code Section 16-11-127.1(b), weapons are not allowed on the University of Georgia Campus.

Weapons include, but are not limited to, any gun, shotgun or rifle, certain knives including any knife having a blade more than 2 inches in length or any discs having at least two points or pointed blades (throwing stars), any flailing instruments, straight edge razor, bludgeon type weapon, stun gun or taser. This law does not prohibit the possession by non-students of any device that is legal to possess, provided it is kept in a locked compartment of a motor vehicle, or a

locked container or locked firearms rack within a motor vehicle. The possession of a valid firearms permit, or a valid license to carry a concealed weapon, does not exempt a person from the provisions of this law. Students are not permitted to possess anything what [*sic*] would be considered a weapon under this statute on school property. (*Weapons not allowed on campus*, 2003)

The accuracy of this policy, specifically the manner in which a weapon may be transported through the university's school safety zone is not clear, and depending on interpretation, may conflict with specific exemptions outlined in § 16-11-127.1.

Paragraph (8) of subsection (c) of O.C.G.A. § 16-11-127.1 addresses exemptions for persons who are not licensed under § 16-11-129 or permitted under § 43-38-10 to carry and possess weapons, but may still legally possess weapons under more limited conditions. According to paragraph (8), persons not licensed or permitted may otherwise have a weapon that is:

in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle which is being used by an adult over 21 years of age to bring to or pick up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school, or when such vehicle is used to transport someone to an activity being conducted on school property which has been authorized by a duly authorized official of the school; provided, however, that this exception shall not apply to a student attending such school. (2002)

To be exempt under this part, a locked compartment or container must restrict access to the weapon, and it must not be accessible by a student. Furthermore, entering the school

safety zone must be for legitimate school purposes, as the school must authorize the activity (as opposed to using parts of the facility after-hours for personal activities, such as taking children to the school playground).

Compared with O.C.G.A. § 16-11-126 and § 16-11-128, which regulate the general possession of weapons in Georgia (areas other than school safety zones), the exemption under O.C.G.A. § 16-11-127.1 (c) (7) is more restrictive and has significantly greater consequences for violators. Under O.C.G.A. § 16-11-126 (d), eligible citizens may have “a loaded firearm in any private passenger motor vehicle in an open manner and fully exposed to view or in the glove compartment, console, or similar compartment of the vehicle” (2002); O.C.G.A. § 16-11-126 does not require the weapon to be in a locked compartment. Concerning arrest and prosecution, a first-time violation of O.C.G.A. § 16-11-126 or O.C.G.A. § 16-11-128 is a misdemeanor, and any violation of O.C.G.A. § 16-11-127.1 is a felony.

Paragraphs (9), (10), (11), (12), (13), (14), (15), and (16) of subsection (c) provide additional exemptions for persons other than peace officers or other law enforcement officers. These persons, who are authorized by virtue of their position in government, by other state or federal law(s), or by regulation, may possess weapons within school safety zones:

(9) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon is necessary for manufacture, transport, installation, and testing under the requirements of such contract;

(10) Those employees of the State Board of Pardons and Paroles when

specifically designated and authorized in writing by the members of the State Board of Pardons and Paroles to carry a weapon;

(11) The Attorney General and those members of his or her staff whom he or she specifically authorizes in writing to carry a weapon;

(12) Probation supervisors employed by and under the authority of the Department of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the ‘State-wide Probation Act,’ when specifically designated and authorized in writing by the director of the Division of Probation;

(13) Public safety directors of municipal corporations;

(14) State and federal trial and appellate judges;

(15) United States attorneys and assistant United States attorneys;

(16) Clerks of the superior courts. (O.C.G.A. § 16-11-127.1, 2002)

Paragraph (17) of subsection (c) specifically exempts school personnel, including teachers, from the code section. The provision requires that the school personnel be “otherwise authorized to possess or carry weapons,” meaning that they are not among those enumerated as ineligible to possess weapons under O.C.G.A. § 16-11-129 (2002). O.C.G.A. § 16-11-129 states that a person is ineligible if:

- Under 21 years of age
- A fugitive from justice
- The subject of proceedings pending for a felony, forcible misdemeanor, or violation of O.C.G.A. § 16-11-126, § 16-11-127, or O.C.G.A. § 16-11-128 until the proceedings are adjudicated

- Convicted of a felony in any state court, United States court, or the court of any foreign nation and has not been officially pardoned
- Convicted of a forcible misdemeanor and has not been free from supervision for at least five years
- Hospitalized (inpatient) in a mental hospital or a alcohol or drug rehabilitation facility within the past five years, or
- Convicted for the use, possession, distribution, or manufacture of a dangerous drug.

According to O.C.G.A. § 16-11-127.1, for school personnel to legally possess the weapon within a school safety zone, the weapon must be “in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle” (2002). Possession of a weapon outside of a motor vehicle by school personnel is prohibited.

Concerning the possession of weapons on property that is not owned or used by a school but still within the 1,000-foot safety zone, subsection (d) of O.C.G.A. § 16-11-127.1 provides for exemptions. Weapons could legally be present within a school safety zone surrounding school property in many situations. For example, the code section allows people (who are otherwise legally allowed to carry or possess firearms) that live or work within a school safety zone to possess or carry such weapons without violating this law. Those who legally possess weapons and enter a school safety zone during the course of transacting lawful business, or who reside within private property that is a part of a school safety zone, or as a visitor of someone living within the school safety zone are not in violation. The law states:

This Code section [16-11-127.1] shall not prohibit any person who resides or works in a business or is in the ordinary course transacting lawful business or any person who is a visitor of such resident located within a school safety zone from carrying, possessing, or having under such person's control a weapon within a school safety zone. (2002)

Only if these otherwise exempted individuals within the 1,000-foot safety zone actually enter the property of a school or school transportation with a weapon would they be in violation of O.C.G.A. § 16-11-127.1. Paragraph (2) of subsection (d) states that violations of O.C.G.A. § 16-11-127.1 that are committed under these circumstances remain subject to the penalties provided in subsection (b), which remain the same as any other violation of O.C.G.A. § 16-11-127.1.

Paragraph (3) of subsection (d) states that "subsection [(d)] shall not be construed to waive or alter any legal requirement for possession of weapons or firearms otherwise required by law" (2002). Code § 16-11-127.1 does not authorize the possession of weapons. Although subsection (d) of O.C.G.A. § 16-11-127.1 does not restrict the possession of weapons by persons off of school property but within a school safety zone whenever conducting legitimate, lawful business, it should not be inferred that a lack of restriction would negate the licensure or permission otherwise required to possess a weapon under code § 16-11-129 or code § 43-38-10.

Enforcement and Implementation Principles

Under any circumstances, a violation of 16-11-127.1 is a felony requiring special, mandatory sentencing. Subsection (e) lists specific instances that may not be used as a defense to a prosecution for violating the code section:

(1) School was or was not in session at the time of the offense; (2) The real property was being used for other purposes besides school purposes at the time of the offense; or (3) The offense took place on a school vehicle (2002).

Subsection (f) of O.C.G.A. § 16-11-127.1 defines the process by which maps outlining the exact areas around a school encompassing a school safety zone may be admitted as evidence. According to subsection (f):

In a prosecution under this Code section, a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of the real property of a school board or a private or public elementary or secondary school that is used for school purposes or within 1,000 feet of any campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education, or a true copy of the map, shall, if certified as a true copy by the custodian of the record, be admissible and shall constitute prima-facie evidence of the location and boundaries of the area, if the governing body of the municipality or county has approved the map as an official record of the location and boundaries of the area. (2002)

Prima-facie evidence is defined as “Evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced” (Garner et al, p. 579, 1999).

Official maps of school safety zones recorded with the local government may be admitted as evidence in a prosecution to establish that a violation occurred within an actual school safety zone.

Subsection (f) of O.C.G.A. § 16-11-127.1 continues, “A map approved under this Code section may be revised from time to time by the governing body of the municipality or county” (2002). Whenever revisions are made to official maps, though, an original of each map that is “approved or revised under this subsection or a true copy of such original map shall be filed with the municipality or county and shall be maintained as an official record of the municipality or county” (O.C.G.A. § 16-11-127.1 (f), 2002).

The prosecution is not limited to maps in order to prove that a violation occurred within a school safety zone. Subsection (f) states that the prosecution may introduce or rely upon other evidence, including testimony, “to establish any element of this offense” (O.C.G.A. § 16-11-127.1, 2002). The use of a “map or diagram other than the one which has been approved by the municipality or county” shall not be precluded by subsection (f) (O.C.G.A. § 16-11-127.1, 2002).

Subsection (g) of § 16-11-127.1 enables county school boards to have the option to adopt local regulations that require the posting of areas, such as roadways, within 1,000 feet of public or private schools or school boards. Signs at posted areas shall read: “Weapon-free and Violence-free School Safety Zones” (2002).

Zero Tolerance

Georgia code § 20-2-751.1 requires local boards of education to develop policies mandating punishment for students determined to have brought a weapon to school.

According to the law, each board “shall establish a policy requiring the expulsion from school for a period of not less than one calendar year” (O.C.G.A. § 20-2-751.1 (a), 2002). The code section continues, however, by granting local boards of education the authority to modify the expulsion requirements on a “case-by-case basis” (O.C.G.A. § 20-2-751.1 (b), 2002). Subsection (c) provides further flexibility to local boards of education by providing authorization for hearing officers, superintendents, local boards, tribunals, or other panels to place students determined to have brought a weapon to school in an alternative educational setting.

In O.C.G.A. § 20-2-751 (1), expulsion is defined as removal “from a public school beyond the current school quarter or semester” (2002). This is different than a long-term suspension, which is defined in paragraph (2) as a suspension greater than 10 days, but not beyond the current quarter or semester. The definition of a weapon as used in § 20-2-751.1 differs from the definition provided by § 16-11-127.1. Mandatory expulsion based on a violation of O.C.G.A. § 20-2-751.1 is limited to possession of a “firearm as such term is defined in Section 921 of Title 18 of the United States Code” (§ 20-2-751 (4), 2002). Both federal and state codes clearly include any firearm, though.

Although the provisions of O.C.G.A. § 20-2-751.1 requiring a one calendar year expulsion seem strict, the provision requiring local boards to develop a policy that may include modification of such requirements removes the essentiality that boards always expel students with weapons. The state code provides authority to allow such mandatory punishments, but the ultimate decision for the expulsion is forced onto each board of education through the enforcement of local policy.

O.C.G.A. § 20-2-751.2 allows school systems to refuse to enroll any student who is currently under suspension or expulsion from another school system. To apply, though, the offense for which the punishment was assigned in the former school system must be an offense that is punishable by the same action within the new system. Enrollment may be refused until the term of the suspension or expulsion is fulfilled. No time limit to the duration of a suspension has been prescribed by the Georgia General Assembly in O.C.G.A. § 20-2-751 et seq., therefore a permanent expulsion is a permissible option.

Expulsion by a school system has been shown to be constitutional, even taking into consideration the compulsory education requirements of the Constitution of the State of Georgia. The Constitution states in Article VIII that the state shall provide an adequate public education through the secondary level (2002). In a Clarke County, Georgia, case, a 12-year-old student was permanently expelled from all Clarke County Schools after an administrative hearing found her responsible for stabbing another student (220 Ga. App. 330, 1996). The decision was subsequently upheld in chain of appeals to the State Board of Education, the superior court system, and finally the Court of Appeals of Georgia. In reference to O.C.G.A. § 20-2-751.2 (b), the appeals court opinion further noted, “other school systems have the right to refuse to enroll a student who is under a disciplinary order from another school district” (220 Ga. App. 330, 1996). Furthermore, the court states, “Under the statute, permanent expulsion is therefore authorized” (1996).

O.C.G.A. § 20-2-751.2 (d) requires school administrators to report certain information about student criminal or delinquent behavior to teachers. Whenever an

administrator discovers that a student has been convicted or adjudicated of an offence designated as a felony act under O.C.G.A. § 15-11-63, he or she is obligated by law to report this information to the student's teachers. Likewise, Georgia courts are obligated to provide notice to school officials about students who are enrolled and have committed certain acts. O.C.G.A. § 15-11-28 (b) (E) requires that superior courts provide written notice to school superintendents within 30 days of any proceedings that a student age 13 to 17 years old is:

convicted of certain offenses over which the superior court has exclusive jurisdiction...or adjudicated delinquent on the basis of conduct which if committed by an adult would constitute such offenses... Such notice shall include the specific criminal offense that such child committed. A local school system to which the child is assigned may request further information from the court's file. (2002)

A separate code section, O.C.G.A. § 15-11-80, requires that:

Within 30 days of any proceeding in which a child is adjudicated delinquent for a second or subsequent time or any adjudicatory proceeding involving a designated felony, the court shall provide written notice to the school superintendent or his or her designee of the school in which such child is enrolled or, if the information is known, of the school in which such child plans to be enrolled at a future date. Such notice shall include the specific delinquent act or designated felony act that such child committed. (2002)

Under both of these provisions, schools are obligated by § 20-2-751.2 to keep such information confidential.

Concerning zero tolerance, weapons, and mandatory expulsion, Georgia law clearly provides local school systems with the ability to expel students that bring weapons to school. That same law, however, provides systems with the ability to consider on a case-by-case basis the specific circumstances surrounding any incident. Considering that school punishment and punitive action from the criminal system are two different actions, it seems that Georgia school systems are ultimately responsible for determining the academic fate of students with weapons. According to the law, they have the flexibility necessary to create local board policies that can guarantee the protection of students' rights, even if expulsion is permanent.

Arrests and convictions for criminal matters, such as a violation of O.C.G.A. § 16-11-127.1, are under the jurisdiction of the court system. Although police and prosecutorial discretion may be applied when making a determination about whether or not to arrest or convict a subject who has violated § 16-11-127.1, the mandatory sentencing provided by the law may restrict circumstantial evidence from helping to determine the most appropriate outcome. Furthermore, intervention by law enforcement officers on school campuses is an action independent from the school and likely completely out of the school's control. As a result, the independent actions of the law enforcement and court systems, completely separate from administrative actions by the school, can be the catalyst for the removal of students from the educational setting. Even though the Georgia schools are statutorily allowed to permanently deny a student the right to an education, this action remains separate from any intervention by an external agency, such as the court system.

CHAPTER 4
FINDINGS, CONCLUSIONS, RECOMMENDATIONS, AND
FINAL COMMENTS

This study's analysis of code § 16-11-127.1 has revealed a variety of findings of value to the various governmental entities responsible for applying and enforcing state law. School leaders, state legislatures, and members of the law enforcement and court communities should review the findings of this dissertation to promote an accurate understanding of the law in this area. Furthermore, legislatures should review the recommended changes presented in this chapter and consider revision of the law through an amendment.

This chapter is divided into four parts. The first part addresses the findings of this doctoral dissertation research. The second part contains conclusions based on this research. Part three presents a variety of specific recommendations for change to O.C.G.A § 16-11-127.1, including specific legislative recommendations to clarify the meaning of the law, make its application more practical, and define more clearly certain aspects that are vague. Commentary on this subject is found in the final part of this chapter.

Findings

Findings from Chapter II, the Review of the Literature, include: A. Historical evidence; B. Findings from court decisions; C. Federal legislative acts; and C. Acts of the Georgia General Assembly.

A. Findings based on historical evidence include:

1. The use of weapons in society is recorded throughout the earliest accounts of human existence. As illustrated on the walls of caves, prehistoric man used weapons (*Archaic art of northern Africa*, n.d.).
2. The possession of weapons by members of society has been the topic of scholarly debate and discussion for thousands of years, and Plato and Aristotle both discussed who should be allowed to possess arms in society (trans. 2000).
3. Weapons utilized by the colonists of America played a significant part in the battles that led to their ability to gain political independence from Britain during the American Revolution.
4. After the American Revolution, weapons continued to play a fundamental part of the creation of our nation's current form of government. Much of the debate about arms possession during the ratification of the United States Constitution focused on their importance in the preservation of freedom.
5. Firearms possession among the general population was viewed as a necessary component of any free and self-governing society (Webster, 1787).
6. The framers of the Constitution recognized the importance of an armed citizenry. They created a series of amendments to the Constitution to protect individual and

unalienable rights, which included, among other things, the right of all citizens to keep and bear arms (*Bill of Rights*, 1791).

7. Among the initial amendments to the U.S. Constitution was the Second Amendment, which states, “A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed” (*Bill of Rights*, 1791).
 8. The framers of the Constitution recognized that an armed citizenry provided protections against the possibility of a future corrupt central government (Hamilton, Madison, & Jay, 1961).
 9. The possession of arms was also seen as a way to ensure that a standing professional army would not eventually take control of the government (Webster, 1787).
 10. Eventually, state governments began to pass laws regulating the possession of weapons. In 1837, the Georgia Legislature enacted a ban on handguns.
- B. Findings based on court decisions include:
1. The Supreme Court of the United States stated in *Tinker v. Des Moines Independent Community School District* (1969) that neither teachers nor students give up their Constitutional rights while they are at school. Therefore, as agents of the government, public school officials are responsible for ensuring that those rights are protected while students and personnel are in public schools.
 2. The 1837 ban on handguns in Georgia was, in *Nunn v. State of Georgia* (1846), determined by the Georgia Supreme Court to be in violation of both the United States Constitution and the Georgia Constitution.

3. In *United States v. Cruikshank* (1875), the United States Supreme Court had an opportunity to interpret the Second Amendment. Although the case did not focus on the Second Amendment, the Court acknowledged that the right of the people to keep and bear arms existed before the Constitution. The Court also stated that the existence of such a right is not dependent specifically upon the Second Amendment. The Court stated that the Second Amendment did not grant permission to keep and bear arms, but it provided a guarantee that Congress would not be able to interfere with the people's right to keep and bear arms.
4. In *Presser v. Illinois* (1886), the Supreme Court affirmed its previous ruling in *Cruikshank*. The Court added that in addition to the restriction placed on Congress not to regulate the right to keep and bear arms, the Second Amendment also applies to the individual state governments.
5. In *United States v. Miller* (1939), the United States Supreme Court applied the Second Amendment to a federal firearm statute in a case involving an arrest made for the interstate transportation of an unregistered short-barreled shotgun. The Court remanded the case and created a test on the type of weapon and its relationship to the militia. The Court determined that a short-barreled shotgun was not a militia-type weapon; hence it was not constitutionally protected under the Second Amendment (NRA-ILA, *Fact Sheet: Federal court cases*, 1999).
6. The prohibition of firearms possession by convicted felons was tested in 1980 with *Lewis v. United States*. The United States Supreme Court denied certiorari. It was determined that with any felony conviction, even in a state court, comes a loss of several rights of citizenship, including the lawful possession of a weapon.

7. In 1990, the United States Supreme Court, in *United States v. Verdugo-Urquidez*, made a statement about the meaning of “the people” as used in several Constitutional amendments. The Court stated:

the term ‘the people,’ as used in the Constitution’s First, Second, Fourth, Ninth, and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with the United States to be considered part of that community. (1990)
8. In 1994, the United States Supreme Court, in *United States v. Lopez* (1995), heard arguments related to the *Gun-Free School Zones Act of 1990*. The United States Supreme Court affirmed 5-4 the lower court’s ruling that the *Act* exceeded Congressional authority to regulate commerce among the states. The Court made it clear that weapons on school campuses was not a federal matter, but an issue to be dealt with by the states through the enforcement of state-level laws. The majority opinion in *Lopez* stated:

The Supreme Court would not (a) pile inference upon inference in a manner that would bid fair to convert congressional authority under the commerce clause to a general police power of the sort retained by the states, and (b) conclude that there will never be a distinction between what is truly national and what is truly local. (1995)
9. Concerning the interpretation of “public gathering” as used in O.C.G.A. § 16-11-127, the Court of Appeals of Georgia provided guidance as to the meaning in *State v. Burns* (1991). The Court of Appeals draws a distinction between those

places where people “are gathered or will be gathered for a particular function” and other places “where people may [otherwise] gather” (*State v. Burns*, 1991).

In effect, as pointed out in a 1996 Georgia Attorney General opinion that refers to the case, the Court of Appeals is stating that the focus is on the gathering of people, and not on the specific place, when referring to a “public gathering” under O.C.G.A. § 16-11-127.

10. Expulsion of a student has been shown to be constitutional, even taking into consideration the compulsory education requirements of the Constitution of the State of Georgia. The Constitution states in Article VIII that the state shall provide an adequate public education through the secondary level (2002). In *D.B. v. Clarke County Board of Education* (App. 330, 1996), The Court of Appeals of Georgia upheld appeals to the State Board of Education and a state superior court in a case pertaining to the permanent expulsion of a 12-year-old student.

C. Findings based on Federal legislative acts:

1. The *National Firearms Act* took effect in 1934. The act, which remains in effect today, regulates possession of certain weapons, referred to today as “Class 3” weapons. Class 3 weapons include fully automatic guns, submachine guns, short-barreled rifles and shotguns, and firearm silencing devices. The *Act* requires that all Class 3 weapons be registered with the government.
2. The *Federal Firearms Act of 1938* added provisions to federal law regulating the interstate sales of weapons. A licensing requirement was established for gun and ammunition dealers, manufacturers, and distributors. It also created a ban on the sale of weapons to persons convicted of certain crimes.

3. With the passage of PL 90-618 in 1968, The *Omnibus Crime Control and Safe Streets Act of 1968: Gun Control Act of 1968* (18 U.S.C. § 921 et seq.) took effect. This act was very comprehensive and became the foundation for all current federal law on guns. Among the requirements are:
 - Stricter rules for gun dealers, manufacturers, and importers, including the retention of records of all transactions
 - A provision making it illegal to alter a serial number on a weapon
 - A ban on mail-order sales of firearms and ammunition
 - A prohibition on the importation of foreign-made military weapons
 - Regulation of the sale of handguns to those at least 21 years of age, and rifles to those at least 18 years of age, and
 - A prohibition on the possession of weapons by convicted felons.
4. With PL 99-308, the *Firearms Owners Protection Act* (1986), gun owners were protected from the development of a centralized government database of gun ownership.
5. PL 99-570, known as the *Armed Career Criminal Act* (1986), provided for increased penalties for the use of firearms in the commission of a criminal act.
6. In 1990, the 101st United States Congress introduced a bill referred to as the *Gun-Free School Zones Act of 1990*. The purpose of the act was to prohibit the possession or discharge of any firearm within an area on and around school property. The bill created language defining the area of school and surrounding properties as a “school zone.” A violation a felony punishable by a fine up to

\$5,000.00 and/or imprisonment up to five years. The *Act* passed as a part of the *Crime Control Act of 1990* (PL 101-647), and took effect on January 29, 1991.

7. The *Gun-Free Schools Act of 1994*, which amended the *Elementary and Secondary Education Act of 1965* (ESEA), required that any local education agency (LEA) that received ESEA assistance have a policy in place that requires the expulsion of any student who brings a firearm to school. The act required student expulsions to last for at least one year; however, a provision was made for the head of a LEA to make an exception as needed on a case-by-case basis.
8. Another provision was passed by Congress in 1994 requiring LEAs receiving federal assistance under the ESEA to have in place a policy “requiring referral to the [local] criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency” (20 U.S.C. § 8922).
9. The current *Gun-Free Schools Act*, authorized by Public Law 108-6, is a part of the federal initiative *Strengthening and Improvement of Elementary and Secondary Schools, 21st Century Schools, Safe and Drug-Free Schools and Communities: Gun Possession* (20 U.S.C. § 7151, 2003). The current *Act* requires that each state receiving Federal funding through any part of 20 U.S.C. §§ 6301 et seq. have in effect a state law that requires expulsion for not less than one year of any student determined to have brought or possessed a firearm at school. The law, however, affords discretion to allow chief administering officers of LEAs to modify the expulsion requirement on a case-by-case basis (20 U.S.C. § 7151 (b) (2)). A special rule (20 U.S.C. § 7151 (c)) provides that the provisions

of the section shall be interpreted consistent with the *Individuals with Disabilities Education Act* (IDEA). No funds shall be made available under any title of this *Act* to any LEA unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such an agency (20 U.S.C. § 7151 (h) (1)).

D. Findings based on acts of the Georgia General Assembly:

1. Prior to the implementation of O.C.G.A. § 16-11-127.1 in 1992, O.C.G.A. § 16-11-126 and § 16-11-127 served as the principal state criminal code sections used by state and local law enforcement officials and prosecutors in Georgia to regulate the possession and carrying of weapons within the state.
2. O.C.G.A. § 16-11-126 defines concealed carry of a weapon in Georgia. A first-time violation of O.C.G.A. § 16-11-126 is a misdemeanor.
3. O.C.G.A. § 16-11-127 regulates the carrying of deadly weapons to or at public gatherings.
4. Before 1992, carrying a weapon to or near a school in Georgia was considered the same offense as carrying a weapon at any other publicly owned facility.
5. The requirements of the various Federal gun-free schools acts prompted the passage of Georgia laws pertaining to schools. O.C.G.A. § 20-2-751.1 required local boards of education to “establish a policy requiring the expulsion from school for a period of not less than one calendar year of any student who is determined...to have brought a weapon to school” (O.C.G.A. § 20-2-751.1 (a)).

6. Federal guidelines shaped Georgia law to allow local boards of education “the authority to modify such expulsion requirement...on a case-by-case basis” (O.C.G.A. § 20-2-751.1 (b)).
7. O.C.G.A. § 20-2-751 (1) defines expulsion as removal “from a public school beyond the current school quarter or semester” (2002). This is different than a long-term suspension, which is defined in paragraph (2) as a suspension greater than 10 days, but not beyond the current quarter or semester.
8. O.C.G.A. § 20-2-751.2 allows school systems to refuse to enroll any student who is currently under suspension or expulsion from another school system. A permanent expulsion is a permissible option.
9. Federal requirements prompted the passage of O.C.G.A. § 20-2-1184, which requires principals to report students suspected or known to have violated certain state laws, including O.C.G.A. § 16-11-127 and § 127.1, to the school superintendent, as well as to local law enforcement and the local district attorney.
10. O.C.G.A. § 16-11-127.1 was created (1992) to specifically regulate the possession of weapons on or around school campuses and properties, in school-owned vehicles, and at school-sponsored events. Georgia Governor Zell Miller signed the new law on April 13, 1992, and possession of a weapon at a school became a felony under the new law.
11. A complete revision was made to O.C.G.A. § 16-11-127.1 during the 1994 regular session as a part a bill referred to as the *School Safety and Juvenile Justice Reform Act of 1994* (S.B. 440, 1994). The new code section was similar to the former code section; however, it provided additional clarity to definitions,

allowed for additional exceptions and exemptions, and increased penalties for violators.

12. An exemption for teachers and other school personnel to have a weapon inside an automobile was included in the 1994 revision to O.C.G.A. § 16-11-127.1. The revision also included a legal definition of a school safety zone as areas including all school property and within 1,000 feet of school property.
13. An additional amendment to O.C.G.A. § 16-11-127.1 passed in 1999 expanding the definition of a weapon. Any knife with a blade of two or more inches was now included among items defined as a weapon. In addition, the term “razor blade” was now included as a weapon.
14. A variety of exemptions are included with O.C.G.A. § 16-11-127.1, some of which include:
 - Any instrument otherwise defined as a weapons that is used for classroom work authorized by the teacher
 - Exemptions for certain state and federal government officials, including the police and military, who are legally authorized to possess weapons
 - Certain officers of state and federal courts, and
 - Participants of authorized sporting events.
15. O.C.G.A. § 16-11-129 establishes parameters of persons not otherwise eligible for licensure to possess weapons, including concealed weapons, in Georgia. Deemed ineligible are persons who are:
 - Under 21 years of age
 - A fugitive from justice

- The subject of proceedings pending for a felony, forcible misdemeanor, or violation of O.C.G.A. § 16-11-126, § 16-11-127, or § 16-11-128 until the proceedings are adjudicated
- Convicted of a felony in any state court, United States court, or the court of any foreign nation and has not been officially pardoned
- Convicted of a forcible misdemeanor and has not been free from supervision for at least five years
- Hospitalized (inpatient) in a mental hospital or an alcohol or drug rehabilitation facility within the past five years, or
- Convicted for the use, possession, distribution, or manufacture of a dangerous drug.

16. O.C.G.A. § 16-11-184 regulates the authority of political subdivisions within Georgia to control the possession of firearms. Due to this preemption, firearms laws regulating possession throughout Georgia are uniform.

17. O.C.G.A. § 15-11-80 requires that courts notify the school system within 30 days of any proceeding in which a child is adjudicated delinquent for the second (or additional) time, or for any other judicial proceeding that involves a designated felony.

Conclusions

The conclusions made in this part are formed based on the findings from the first part of this chapter. Based on this study's findings, it may be concluded:

1. Weapons have played a significant role in human history.

2. That the right to possess weapons – both in the past and today – is an important component of the freedom that is enjoyed by U.S. citizens (*Bill of Rights*, 1791).
3. The Second Amendment of the *Bill of Rights* (1791) protects the individual's right to own weapons.
4. The Constitution of the State of Georgia recognizes the rights of citizens to keep and bear arms; however, the State of Georgia may regulate the possession of weapons if State laws do not conflict with the *Bill of Rights* (Georgia Constitution, Article I, Section I, Paragraph VIII).
5. The Federal government imposes special requirements on the states through special provisions requisite to funding. All states that receive Federal educational funding must have in place laws regulating firearms in and around schools (20 U.S.C. § 7151 (h) (1)).
6. Federal law does not directly regulate firearms and other weapons in and around schools.
7. The State of Georgia complies with the current Federal funding requirements, as all state laws mandated by Federal law are currently in place.
8. Compared to other State laws regulating the possession of weapons in public places, the State of Georgia considers the unauthorized and illegal possession of weapons in school safety zones to be a much more serious matter than the unauthorized possession of weapons in other public places throughout the State (O.C.G.A. § 16-11-127.1).
9. Exemptions for certain government public safety officials are noted in O.C.G.A. § 16-11-127.1. Absent from the noted exemptions, though, are a variety of public

service officials who are required to demonstrate competency with the utilization of a variety of instruments – other than firearms – that are defined as weapons under the law. These officials must carry out their duties as necessary throughout the State, including areas within school safety zones. These public safety officials not enumerated as eligible to possess certain items that can be construed as weapons include:

- State-certified firefighters
- State-certified or licensed emergency medical personnel, including emergency medical technicians (EMTs), paramedics, cardiac technicians, and first responders, and
- State-certified rescue specialists.

These personnel utilize a variety of tools and equipment – other than firearms – that are mandatory to appropriately perform their jobs. These items are legal to possess throughout the State, but could be construed as a weapon under the provisions of O.C.G.A. § 16-11-127.1, and therefore be illegal to possess within a school safety zone. These items include, but are not limited to:

- Knives of various types that are not designed for offense or defense
- Scalpels, scissors, needles, and other sharp instruments
- Axes, saws, and other cutting tools, and
- Hammers and other bludgeon-type impact tools.

10. An exemption is in place for teachers and other school personnel otherwise authorized to possess a weapon to have a weapon in a locked container that is in a vehicle located within a school safety zone (O.C.G.A. § 16-11-127.1 (c) (17)).

11. Excluding the existing provision in O.C.G.A. § 16-11-127.1 (a) (2) that allows teachers to permit instruments that may be construed as weapons in the classroom setting, there is no other provision of law for school personnel that permits the possession of items necessary during the daily operation of a school facility. A variety of school personnel utilize instruments – other than firearms – that are otherwise legal to possess throughout the state, but may be considered a weapon under the more strict definition provided by O.C.G.A. § 16-11-127.1. These personnel who utilize items of this nature and may be employed or contracted to work within school safety zones include:

- Maintenance workers
- Vehicle mechanics
- Custodial workers
- Facilities managers and supervisors
- Building contractors and members of construction crews
- Chefs, cooks, and other kitchen workers
- Utility contractors, and
- School administrators.

These school employees and contractors utilize a variety of tools and equipment – other than firearms – to perform their jobs within the school setting. These items are legal for adults to possess throughout the State, but could be construed as a weapon under the provisions of O.C.G.A. § 16-11-127.1, therefore they are considered illegal within a school safety zone. These items include, but are not limited to:

- Kitchen knives
- Utility knives
- Other knives, such as pocket knives, not designed for offense or defense
- Handheld multi-purpose tools, which are not designed for offense or defense, that may contain a knife blade
- Scissors and other cutting tools
- Axes, saws, and other cutting tools, and
- Hammers and other bludgeon-type impact tools.

12. O.C.G.A. § 16-11-127.1 provides an exemption for law enforcement and certain government officials to possess weapons within school safety zones. The law is also clear that students may not possess weapons in school safety zones. The law is unclear, however, whether or not law enforcement and certain government officials who are also students at educational institutions – their status as a student is apart from their duties as in law enforcement or to the government – remain authorized to possess weapons while attending the school as a student.

13. O.C.G.A. § 16-11-127.1 provides an exemption for teachers and other school personnel otherwise authorized to possess a weapon to have a weapon in a locked container that is in a vehicle located within a school safety zone. The law is also clear that students may not possess weapons in school safety zones. The law is unclear, however, whether or not teachers and other school personnel who are also students at educational institutions – their status as a student is apart from

their duties as a school employee – remain authorized to possess weapons that are kept locked in their personal vehicle while they are attending school as a student.

14. O.C.G.A. § 16-11-127.1 does not provide an exemption for items that could be used as bludgeon-type weapons, such as jack handles or tire irons, that usually come as standard equipment on automobiles, which are driven into or through school safety zones by persons including students.
15. O.C.G.A. § 16-11-127.1 does not provide an exemption for items that could be used as bludgeon-type weapons, such as metal flashlights, which may be kept inside of a locked automobile by persons including students.
16. O.C.G.A. § 16-11-127.1 does not provide an exemption for pocket knives not designed for offense or defense or other tools that may be kept inside of a locked vehicle kept within a school safety zone for use by occupants of the car during a roadside emergency, such as a mechanical breakdown.
17. Georgia law provides that school officials on a case-by-case basis may review weapons violations when considering whether a student should be expelled from school.

Recommendations

The following recommendations are based on the findings and conclusions presented in this chapter. These recommendations are intended to help public school officials in Georgia make sound decisions that are reasonable and in compliance with the current laws researched in this dissertation. Additional recommendations are included in Part B that suggest possible legislative revisions to O.C.G.A. § 16-11-127.1.

These recommendations are not intended as legal advice. Legal advice should be sought only from qualified legal counsel. Legal advice is not implied, nor should it be inferred, by any part of this chapter or dissertation.

A. Recommendations for school officials:

1. Avoid the development of local zero tolerance policies. The automatic implementation of consequences for certain actions removes the element of discretion necessary to effectively deal with incidents involving students and staff and yet remain within the due process requirements afforded by the U.S. Constitution. School systems with local level zero tolerance policies should consider revising them to allow discretion when appropriate.
2. School administrators should never adopt policies or regulations inconsistent with state and federal law pertaining to weapons on a school campus. The provisions and exemptions provided by O.C.G.A. § 16-11-127.1 were developed by the Georgia General Assembly and signed into law by the Governor. No local school administrator should assume that they possess the authority to supercede the law by creating policies or regulations prohibiting persons from exercising their rights under the law.
3. The discretion afforded by State and Federal law pertaining to mandatory expulsions should be exercised when appropriate. When appropriate, school systems should consider other options, such as alternative placements in more restrictive school environments (which is mentioned in the law as a suggestion), before expulsion.

4. School officials should develop a constructive relationship with the law enforcement authority in their jurisdiction. As additional systems begin to use school resource officers, this relationship will naturally become strengthened as the amount of professional contact between the two entities increases.
 5. School administrators should remember that in addition to being school employees, school resource officers are officers of the court with special authority, such as the power of arrest. School administrators should never unduly interfere with their duties or investigations as law enforcement officers.
 6. School administrators should develop a working relationship with the district attorney in their jurisdiction. Efforts should be made by school officials to become familiar with the local juvenile court system, as it has jurisdiction over the students in the local schools.
 7. School administrators should always make required reports, such as the Georgia requirement for notifying both law enforcement and the district attorney about weapons violations at their school (O.C.G.A. § 16-11-127.1). Although school administrators often have considerable discretion in civil disciplinary actions, they should never assume that they possess the discretion of whether the pursuit of criminal charges is appropriate in a particular case. This applies in any circumstance that a crime has been committed. In Georgia, only law enforcement and the district attorney possess such powers of criminal law enforcement and prosecutorial discretion.
- B. Recommendations for legislative amendments to O.C.G.A. § 16-11-127.1:

1. The Georgia General Assembly should consider providing an exemption in the law to allow public safety officials who are not already included among those allowed to possess weapons within school safety zones and need to use items that could be construed as weapons – other than firearms – to effectively carry out their duties. State-certified firefighters, emergency medical personnel, first responders, and rescue personnel all utilize a variety of tools and equipment – other than firearms – that are necessary to appropriately perform their jobs. These items are legal to possess throughout the State, but could be construed as a weapon under the provisions of O.C.G.A. § 16-11-127.1, and would therefore be illegal within a school safety zone. Public safety officers should be legally allowed to use items such as knives of various types that are not designed for offense, such as scalpels, scissors, needles, other sharp instruments, axes, saws, other cutting tools, hammers, and other bludgeon-type impact tools as necessary in the course of their duties as public safety officers.
2. The Georgia General Assembly should consider providing an exemption in the law to allow school personnel and contractors, who are not already included among those allowed to possess weapons, to carry items that could be construed as weapons – other than firearms – to effectively perform their duties. These workers include maintenance workers, vehicle mechanics, custodial workers, facilities managers and supervisors, building contractors and members of construction crews, utility contractors, cooks and other kitchen workers, and school administrators. These personnel must frequently utilize a variety of tools that are legal to possess throughout the State, but could be construed as a weapon

under the provisions of O.C.G.A. § 16-11-127.1, and would otherwise be illegal within a school safety zone. These items include, but are not limited to: kitchen knives, utility knives, pocket knives not designed for offense or defense, handheld multi-purpose tools not designed for offense or defense that may contain a knife blade, other cutting tools, axes, hammers and other bludgeon-type impact tools, and saws.

3. The Georgia General Assembly should consider providing an exemption in the law to allow for an exemption for items that could be used as bludgeon-type weapons, such as jack handles or tire irons, that usually come as standard equipment on automobiles, which are driven into or through school safety zones by persons including students. This exemption should also include items kept within an automobile that could be included as a part of a vehicle tool kit. Items of this nature could include bludgeon-type objects, such as metal flashlights, and pocket knives not designed for offense or defense, which may be kept inside of a locked automobile by persons including students. This exemption should require that these items remain secured in any automobile within a school safety zone.
4. The Georgia General Assembly should provide additional guidance about exemptions for law enforcement officials, certain government officials, and teachers who are enrolled as students at educational institutions apart from their official duties. A logical action would be to allow those persons who are otherwise eligible to possess a weapon within the requirements of O.C.G.A. § 16-11-127.1 to retain such eligibility during the course of educational pursuits that may be outside of their employment. The provision should include that eligible

personnel should not exceed their rights of possession otherwise provided within the code section. For example, professional teachers who happen to be graduate students at a local college should be permitted to have a weapon inside of a locked container within the school safety zone of their college, just as they can legally possess the weapon in the school safety zone of the school by which they are employed. Likewise, a law enforcement officer who is authorized to carry a weapon within a school safety zone as a part of his or her professional duties, who attends any school as a student, should not be barred from possessing a firearm simply due to the fact that he or she is also a student.

Final Comments

Common sense dictates that a school cafeteria worker is going to require the use of a kitchen knife to perform duties assigned to him or her by the school. A paramedic, firefighter, or rescue worker may need to use a knife, axe, or other implement currently considered illegal while responding to an emergency on school property. Furthermore, school custodians and maintenance workers must use knives and other sharp tools as a part of their duties at school. As O.C.G.A. § 16-11-127.1 currently reads, such an act is a felony within a school safety zone. Many believe that discretion by law enforcement and prosecutorial discretion applied by district attorneys protect such an individual from arrest, and this may in fact be true, as these items are used in schools across the state each day without incident. However, prosecutorial discretion should never be the only protection against arrest and prosecution under the law. When it is discovered that laws need revision, they should be revised.

Future research should investigate further the newly evolving partnership between the law enforcement community and the public schools, including school resource officers. Many of the parameters of this new relationship have yet to be defined.

Concerning the current status of our nation, a variety of recent events have changed not only education, but our nation. According to Spurka:

Since the tragedy at Columbine on April 20, 1999[,] and other recent incidents of school violence, in addition to the attacks on the World Trade Center and the Pentagon on September 11, [2001,] the world has never been more focused on school safety than it is today. The area of public school discipline and the need to maintain a safe educational environment should be a priority for state and local educational agencies. (2002, p. 140)

However terrible these events are, Americans should never allow them to become excuses for government to further restrict our freedoms. As Dayton stated (2003):

Despite the horrifying impact of the September 11 terrorist attacks on the U.S., we cannot allow these events to serve as the basis for limiting our civil liberties. These events did not amend the Constitution, and cannot be allowed to serve as a basis for ignoring our constitutional rights. Doing so would be to do to ourselves what terrorists and those who hate our nation's ideals had previously failed to do: destroy our individual liberties and our free society. There will always be another Hitler, Stalin, or Taliban, threatening to destroy us if we refuse to abandon our freedoms in favor of totalitarian authority. But we cannot preserve our freedoms by abandoning them in fear. If we are to remain true to our nation's ideals, and preserve the legacy of freedom for our children, we must have the wisdom,

courage, and strength to demand both liberty and safety. As Benjamin Franklin stated: ‘Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.’ (J. P. Dayton, personal communication, May 21, 2003)

Public school administrators are faced with the overwhelming task of implementing a variety of laws, policies, and regulations, but they must remain cognizant of the fact that they are agents of government. The laws and policies implemented by school officials, as well as all government officials, should be easy to understand and, most importantly, founded on common sense principles that allow discretion to be fairly applied when necessary. At the same time, though, the laws, policies, and regulations enforced should be strong enough to send a clear message when they are disobeyed. Georgia’s zero tolerance weapons law concerning school safety zones is an effective law in need of a few common-sense revisions. Having sound educational laws in place allows for sound educational practice in the public schools of Georgia.

DEFINITION OF TERMS

Absolute liability

Absolute liability is a form of liability that does not depend on actual negligence or intent to harm (Garner et al., 1999, p. 926); it may also be referred to as *strict liability*.

CCW

CCW refers to carrying a concealed weapon.

Dirk

A dirk is a type of dagger.

Jurisdiction

Jurisdiction is “A government’s general power to exercise authority over all persons and things within its territory;” and “A geographic area within which political or judicial authority may be exercised (Garner et al., 1999, p. 855).

LEA

A LEA is a local education agency, such as a district board of education.

Mens rea

Mens rea refers to a defendant’s state of mind, which, in common law, is an essential element of a crime (Garner et al., 1999).

O.C.G.A.

Official Code of Georgia Annotated

Peace officer

A peace officer is defined by O.C.G.A. § 35-8-2 as, “An agent...or officer of this state, a subdivision or municipality...who, as an employee...or as a volunteer, is...by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime.”

Prima-facie evidence

Prima-facie evidence is evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced” (Garner et al., p. 579, 1999).

Real property

“Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land” (Garner et al., p. 1234, 1999).

SRO

A SRO, or school resource officer, is typically a sworn law enforcement officer of a LEA, or a law enforcement officer of a local jurisdiction who is assigned to work in a school or school district. In most instances, SROs have equal authority as any other law enforcement officer within their jurisdiction, including the power of arrest and the authorization to carry weapons. The duties of SROs may include typical law enforcement duties, such as the preservation of order, crime detection, and crime prevention. Additionally, SROs often have other duties, such as classroom teaching assignments, conducting staff development with school faculty and staff members, student mentoring, and other duties specific to the school environment.

Strict liability

See “absolute liability.”

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APPENDIX A

O.C.G.A. § 16-11-127.1 (2002)

O.C.G.A. § 16-11-127.1.

(a) As used in this Code section, the term:

(1) 'School safety zone' means in, on, or within 1,000 feet of any real property owned by or leased to any public or private elementary school, secondary school, or school board and used for elementary or secondary education and in, on, or within 1,000 feet of the campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education.

(2) 'Weapon' means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring stick, metal knucks, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106. This paragraph excludes any of these instruments used for classroom work authorized by the teacher.

(b) Except as otherwise provided in subsection (c) of this Code section, it shall be unlawful for any person to carry to or to possess or have under such person's control while within a school safety zone or at a school building, school function, or school

property or on a bus or other transportation furnished by the school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not more than \$10,000.00, by imprisonment for not less than two nor more than ten years, or both; provided, however, that upon conviction of a violation of this subsection involving a firearm as defined in paragraph (2) of subsection (a) of Code Section 16-11-131, or a dangerous weapon or machine gun as defined in Code Section 16-11-121, such person shall be punished by a fine of not more than \$10,000.00 or by imprisonment for a period of not less than five nor more than ten years, or both. A child who violates this subsection shall be subject to the provisions of Code Section 15-11-63.

(c) The provisions of this Code section shall not apply to:

- (1) Baseball bats, hockey sticks, or other sports equipment possessed by competitors for legitimate athletic purposes;
- (2) Participants in organized sport shooting events or firearm training courses;
- (3) Persons participating in military training programs conducted by or on behalf of the armed forces of the United States or the Georgia Department of Defense;
- (4) Persons participating in law enforcement training conducted by a police academy certified by the Peace Officer Standards and Training Council or by a law enforcement agency of the state or the United States or any political subdivision thereof;
- (5) The following persons, when acting in the performance of their official duties or when en route to or from their official duties:

- (A) A peace officer as defined by Code Section 35-8-2;
 - (B) A law enforcement officer of the United States government;
 - (C) A prosecuting attorney of this state or of the United States;
 - (D) An employee of the Georgia Department of Corrections or a correctional facility operated by a political subdivision of this state or the United States who is authorized by the head of such correctional agency or facility to carry a firearm;
 - (E) A person employed as a campus police officer or school security officer who is authorized to carry a weapon in accordance with Chapter 8 of Title 20; and
 - (F) Medical examiners, coroners, and their investigators who are employed by the state or any political subdivision thereof;
- (6) A person who has been authorized in writing by a duly authorized official of the school to have in such person's possession or use as part of any activity being conducted at a school building, school property, or school function a weapon which would otherwise be prohibited by this Code section. Such authorization shall specify the weapon or weapons which have been authorized and the time period during which the authorization is valid;
- (7) A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10, when such person carries or picks up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school or any weapon legally kept

within a vehicle in transit through a designated school zone by any person other than a student;

(8) A weapon which is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle which is being used by an adult over 21 years of age to bring to or pick up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school, or when such vehicle is used to transport someone to an activity being conducted on school property which has been authorized by a duly authorized official of the school; provided, however, that this exception shall not apply to a student attending such school;

(9) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon is necessary for manufacture, transport, installation, and testing under the requirements of such contract;

(10) Those employees of the State Board of Pardons and Paroles when specifically designated and authorized in writing by the members of the State Board of Pardons and Paroles to carry a weapon;

(11) The Attorney General and those members of his or her staff whom he or she specifically authorizes in writing to carry a weapon;

(12) Probation supervisors employed by and under the authority of the Department of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide Probation Act,' when specifically designated and authorized in writing by the director of the Division of Probation;

- (13) Public safety directors of municipal corporations;
- (14) State and federal trial and appellate judges;
- (15) United States attorneys and assistant United States attorneys;
- (16) Clerks of the superior courts; or
- (17) Teachers and other school personnel who are otherwise authorized to possess or carry weapons, provided that any such weapon is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle.

(d)

(1) This Code section shall not prohibit any person who resides or works in a business or is in the ordinary course transacting lawful business or any person who is a visitor of such resident located within a school safety zone from carrying, possessing, or having under such person's control a weapon within a school safety zone; provided, however, it shall be unlawful for any such person to carry, possess, or have under such person's control while at a school building or school function or on school property, a school bus, or other transportation furnished by the school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25.

(2) Any person who violates this subsection shall be subject to the penalties specified in subsection (b) of this Code section.

(3) This subsection shall not be construed to waive or alter any legal requirement for possession of weapons or firearms otherwise required by law.

(e) It shall be no defense to a prosecution for a violation of this Code section that:

- (1) School was or was not in session at the time of the offense;
- (2) The real property was being used for other purposes besides school purposes at the time of the offense; or
- (3) The offense took place on a school vehicle.

(f) In a prosecution under this Code section, a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of the real property of a school board or a private or public elementary or secondary school that is used for school purposes or within 1,000 feet of any campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education, or a true copy of the map, shall, if certified as a true copy by the custodian of the record, be admissible and shall constitute prima-facie evidence of the location and boundaries of the area, if the governing body of the municipality or county has approved the map as an official record of the location and boundaries of the area. A map approved under this Code section may be revised from time to time by the governing body of the municipality or county. The original of every map approved or revised under this subsection or a true copy of such original map shall be filed with the municipality or county and shall be maintained as an official record of the municipality or county. This subsection shall not preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense. This subsection shall not preclude the use or admissibility of a map or diagram other than the one which has been approved by the municipality or county.

(g) A county school board may adopt regulations requiring the posting of signs designating the areas within 1,000 feet of school boards and private or public elementary and secondary schools as 'Weapon-free and Violence-free School Safety Zones.'

APPENDIX B

O.C.G.A. § 20-2-751 (2002)

O.C.G.A. § 20-2-751.

As used in this subpart, the term:

- (1) 'Expulsion' means expulsion of a student from a public school beyond the current school quarter or semester.
- (2) 'Long-term suspension' means the suspension of a student from a public school for more than ten school days but not beyond the current school quarter or semester.
- (3) 'Short-term suspension' means the suspension of a student from a public school for not more than ten school days.
- (4) 'Weapon' means a firearm as such term is defined in Section 921 of Title 18 of the United States Code.

APPENDIX C

O.C.G.A. § 20-2-751.1 (2002)

O.C.G.A. § 20-2-751.1 (2002).

(a) Each local board of education shall establish a policy requiring the expulsion from school for a period of not less than one calendar year of any student who is determined, pursuant to this subpart, to have brought a weapon to school.

(b) The local board of education shall have the authority to modify such expulsion requirement as provided in subsection (a) of this Code section on a case-by-case basis.

(c) A hearing officer, tribunal, panel, superintendent, or local board of education shall be authorized to place a student determined to have brought a weapon to school in an alternative educational setting.

(d) Nothing in this Code section shall infringe on any right provided to students with Individualized Education Programs pursuant to the federal Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act of 1973, or the federal Americans with Disabilities Act.

APPENDIX D

O.C.G.A. § 20-2-751.2 (2002)

O.C.G.A. § 20-2-751.2 (2002).

(a) As used in this Code section, the term ‘disciplinary order’ means any order of a local school system which imposes short-term suspension, long-term suspension, or expulsion upon a student in such system.

(b) A local board of education which has a student who attempts to enroll or who is enrolled in any school in its school system during the time in which that student is subject to a disciplinary order of any other school system is authorized to refuse to enroll or subject that student to short-term suspension, long-term suspension, or expulsion for any time remaining in that other school system’s disciplinary order upon receiving a certified copy of such order if the offense which led to such suspension or expulsion in the other school was an offense for which suspension or expulsion could be imposed in the enrolling school.

(c) A local school system may request of another school system whether any disciplinary order has been imposed by the other system upon a student who is seeking to enroll or is enrolled in the requesting system. If such an order has been imposed and is still in effect for such student, the requested system shall so inform the requesting system and shall provide a certified copy of the order to the requesting system.

(d) If any school administrator determines from the information obtained pursuant to this Code section or from Code Section 15-11-28 or 15-11-80 that a student has been convicted of or has been adjudicated to have committed an offense which is a designated felony act under Code Section 15-11-63, such administrator shall so inform all teachers to whom the student is assigned. Such teachers and other certificated professional personnel as the administrator deems appropriate may review the information in the student’s file

provided pursuant to this Code section that has been received from other schools or from the juvenile courts or superior courts. Such information shall be kept confidential.